



# STATE OF MINNESOTA

## OFFICE OF THE ATTORNEY GENERAL

LORI SWANSON  
ATTORNEY GENERAL

June 11, 2008

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Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

**Re: Matter No. 05-194 (June 12, 2008 hearing regarding early termination fees)**

Dear Ms. Dortch,

The Minnesota Office of Attorney General submits the following written comments to the Federal Communications Commission ("FCC") in connection with the FCC's public hearing on early termination fees ("ETFs"), currently scheduled for June 12, 2008.

We understand that one of the topics that may be addressed at this hearing is a regulatory proposal from a wireless carrier relating to ETF charges. Although we are not privy to this proposal, it has been reported it includes terms that would grant wireless carriers immunity from state consumer protection regulation and related pending lawsuits. See <http://www.msnbc.msn.com/id/24755545/>. We oppose as inconsistent with the Communications Act and detrimental to the public interest any proposed rule that would preempt state consumer protection laws, regulations, and/or regulatory activity.

Although states are preempted from specifically regulating the "rates" charged by wireless service providers, the FCC never has taken the position that wireless providers are exempt from state consumer protection laws designed to safeguard the public from unfair contract and billing practices and other commercial activity. Indeed, the Commission previously rejected this position. See *In the Matter of Southwestern Bell Mobile Sys., Inc.*, 14 F.C.C.R. 19898, 19908, 1999 WL 1062835 (Nov. 24, 1999) ("We do not agree . . . that state contract or consumer fraud laws relating to the disclosure of rates and rate practices have generally been preempted with respect to [wireless carriers]. Such preemption by Section 332(c)(3)(A) is not supported by its language or legislative history.").

Any proposed rule that would preempt states from regulating wireless carriers would itself be precluded by the Communications Act. Under the Act, states are expressly allowed to regulate other "terms and conditions" of wireless service, 47 U.S.C. § 332 (c)(3)(A) (2008), which specifically include matters such as customer billing information and practices, billing disputes, consumer protection matters, facilities siting issues (e.g., zoning), transfers of control, the bundling of services and equipment, the requirement that carriers make capacity available on a wholesale basis and such other matters that fall within a state's lawful authority. *Cellco Partnership v. Hatch*, 431 F.3d 1077, 1080 (8th Cir. 2005) (citing H.R.Rep.


No. 103-111, at 261 (1993), *reprinted in* 1993 U.S.C.C.A.N. 378, 588); *accord, Southwestern Bell Mobile Sys.*, 14 F.C.C.R. at 19908.

The states have a strong interest in protecting consumers of wireless services. For example, thirty-two (32) states entered into joint agreements with several carriers relating to the consumer protection laws of those states. *See Exhibits A-C (attached)*. Moreover, other states have taken separate regulatory action with respect to the wireless industry. For example, in September of 2007, the Minnesota Office of Attorney General filed a consumer protection lawsuit against Sprint Nextel, alleging that Sprint Nextel violated Minnesota's Consumer Fraud Act and Deceptive Trade Practices Act by entering consumers into wireless contracts or by extending their contracts without obtaining meaningful consent from the impacted consumers. *See Exhibit D*. In November of 2007, the California Office of Attorney General reached a stipulated consent judgment with AT&T Mobility, which provided for monetary and injunctive relief in connection with that company's billing practices and required certain disclosures. *See Exhibit E*. Moreover, in February of 2008, the Florida Office of Attorney General entered into an agreement with AT&T Mobility, which called for certain disclosures and other measures in connection with third-party mobile content purchases and required the company to issue credits and refunds to consumers for unauthorized charges. *See Exhibit F*.

Any federal rule that would purport to preempt states' rights to apply such consumer protection laws to wireless carriers would prejudice the public interest. Preempting state consumer protection regulation would do nothing to enhance the FCC's ability to regulate the wireless industry, but simply prevent states from taking basic measures to protect the public.

We hope the FCC will consider these comments in connection with the June 12, 2008 hearing. In the meantime, please feel free to contact our office if there is any additional information that we might be able to provide that would be helpful to the Commission in considering the above comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori Swanson", with a stylized flourish at the end.

LORI SWANSON  
Attorney General



IN THE MATTER OF )  
 )  
CINGULAR WIRELESS LLC )

### ASSURANCE OF VOLUNTARY COMPLIANCE

1. This Assurance of Voluntary Compliance<sup>1</sup> ("Assurance") is entered into by the Attorneys General<sup>2</sup> (collectively, "Attorneys General") of the States of Alabama, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Virginia, Wisconsin and Wyoming (collectively, "Participating States"), and Respondent Cingular Wireless LLC.

2. Cingular Wireless LLC is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 5565 Glenridge Connector, Atlanta, Georgia 30342 ("Carrier"). "Cingular Wireless" is the assumed name by which Carrier does business in the Participating States.

### BACKGROUND

<sup>1</sup> This Assurance of Voluntary Compliance shall, for all necessary purposes, also be considered an Assurance of Discontinuance.

<sup>2</sup> Of the states listed, Georgia is represented by the Administrator of the Fair Business Practices Act, who is statutorily authorized to undertake consumer protection functions for the State of Georgia, including acceptance of Assurances of Voluntary Compliance. Hawaii is not represented by its Attorney General. Hawaii is represented by its Office of Consumer Protection, an agency which is not part of the state Attorney General's Office, but which is statutorily authorized to undertake consumer protection functions, including legal representation of the State of Hawaii. Tennessee is represented by the Attorney General, but the Tennessee Attorney General's Office enters into this Assurance in conjunction with the Tennessee Division of Consumer Affairs. For simplicity purposes, the entire group will be referred to as the "Attorneys General."

EXHIBIT

A

3. This Assurance follows an inquiry by the Attorneys General and communications between the Attorneys General and Carrier as to whether representations by Carrier in certain of its consumer advertising materials, including but not limited to, television advertising, print advertising, radio advertising, Internet websites, brochures and other consumer handouts, and billboards regarding its wireless voice service and associated data communications services violate the consumer protection and trade practice statutes listed herein at footnote 3 and/or the regulations promulgated pursuant to the same (collectively, "Consumer Statutes").<sup>3</sup>

4. Carrier provides wireless voice and data communications services and is licensed by the Federal Communications Commission ("FCC") to provide wireless telephone service. Carrier

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<sup>3</sup> Alabama Deceptive Trade Practices Act, Alabama Code 1975 § 8-19-1, *et seq.*; Arkansas Code Ann. § 4-88-101 *et seq.*; Colorado Consumer Protection Act, § 6-1-101, *et seq.*, C.R.S. (2003); 6 Delaware Code § 2511 *et seq.*; Georgia Fair Business Practices Act of 1975, O.C.G.A. 10-1-390, *et seq.*; Hawaii Rev. Stat. § 480-2 and § 487-5(6); Idaho Code § 48-601 *et seq.*; Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.*; Illinois Uniform Deceptive Trade Practices Act, § 815 ILCS 510/1, *et seq.*; Iowa Consumer Fraud Act, Iowa Code § 714.16; Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*; Maine Unfair Trade Practices Act, 5 M.R.S.A. § 205-A *et seq.*; Maryland Consumer Protection Act, Maryland Commercial Law Code Annotated § 13-101 *et seq.*; Massachusetts Consumer Protection Act M.G.L. c. 93A §§ 1-11; Michigan Consumer Protection Act, M.C.L. 445.901 *et seq.*, M.S.A. 19.418 (1) *et seq.* (1994); Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1 (Rev. 2000); Montana MCA 30-14-101 *et seq.*; Nebraska Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601 *et seq.* and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. §§ 87-301 *et seq.* (1994); Nevada Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 to 598.0999; New Hampshire Rev. Stat. Ann. 358-A; New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*; New Mexico Unfair Trade Practices Act, NMSA § 57-12-1 *et seq.*, (1978); North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1, *et seq.*; North Dakota Century Code (NDCC) Sections 51-15-01, *et seq.*; Ohio Consumer Sales Practices Act, R.C. § 1345.01 *et seq.*; Oklahoma Consumer Protection Act 15 O.S. §§ 751 *et seq.*; Oregon Unlawful Trade Practices Act, ORS 646.605 *et seq.*; South Dakota Deceptive Trade Practices Act, SDCL Ch. 37-24; Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*; Texas Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. and Com. Code § 17.41 *et seq.*, (West 1993); The Virginia Consumer Protection Act, Va. Code Section 59.1-196 *et seq.*; Wisconsin Statutes §§ 100.18(1) and 100.207; and Wyoming Consumer Protection Act, Wyo. Stat. Ann. §§ 40-12-101 *et seq.* (2003).

supplements its FCC licensed areas with contractual roaming agreements that it has entered into with third party wireless companies.

5. Carrier runs advertising for its wireless voice and data communications services in different media in many states. Certain of its advertising materials promote different wireless service pricing plans offered in different parts of the country.

6. Carrier distributes advertising materials to Consumers in retail outlets in many states. These materials explain the company's wireless service pricing plans and wireless voice and data communications services.

7. Carrier believes that it is, and at all times has been, in compliance with the Consumer Statutes. Carrier further believes that its advertising materials always have been accurate and complete and always have disclosed all necessary material information, including all material limitations in Carrier's wireless service and all material rate information, clearly and conspicuously. As a matter of corporate policy, Carrier believes it always has adhered, and continues to adhere, to pro-individual consumer and pro-business consumer business practices and follows the highest ethical standards, which constitute best practices in the wireless industry.

8. Carrier believes it has cooperated fully with the Attorneys General throughout their inquiry. Although Carrier denies it has engaged in unlawful or otherwise inappropriate business practices, Carrier agrees to this Assurance so that this matter may be resolved amicably, without further cost or inconvenience to the Participating States, their citizens or Carrier, and to avoid the cost and inconvenience to Carrier that will result if the Participating States subject Carrier to different advertising and business requirements in each Participating State.

#### TERMS OF ASSURANCE

### A. Definitions

For purposes of this Assurance, the following definitions shall apply:

9. A statement is "clear and conspicuous" if it is disclosed in such size, color, contrast, location, duration, and/or audibility that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies or is necessary to prevent other information from being misleading or deceptive, then the statement must be presented in proximity to that information, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner. In addition:

- a. A radio disclosure must be delivered in a volume, cadence and location sufficient for a consumer to hear and comprehend it;
- b. A television disclosure must (i) appear in video in a type size, shade and location, and remain on the screen for a sufficient duration, for a consumer to read and comprehend it, and/or (ii) be delivered in audio in a volume, cadence and location sufficient for a consumer to hear and comprehend it;
- c. A print or Internet disclosure must appear in a type size, contrast and location sufficient for a consumer to read and comprehend it.

10. "Wireless Service" means any basic voice wireless service offered by a commercial mobile radio service provider.

11. "Enhanced Feature" means any communications service associated with Wireless Service, including without limitation paging, voice mail, wireless Internet, text messaging and personal information services.

12. "Consumer" means an individual or business, as defined by and in accordance with a Participating State's Consumer Statute, residing in a Participating State.
13. "Sales Transaction" means a transaction in which (i) a Consumer who is not a current customer of Carrier purchases and enters in a contract for Wireless Service from Carrier, or (ii) a Consumer who is a current customer of Carrier renews or extends his or her contract for a fixed term, or changes Wireless Service rate plans, without regard to whether the rate plan change results in a new fixed term. For purposes of this Assurance, "fixed term" refers to a Wireless Service contract with a term of greater than one month.
14. "Telephone Sales Representative" means anyone who makes any representations to any Consumer via a telephone conversation regarding Carrier's Wireless Service for the purpose of inducing the Consumer to enter into a Sales Transaction with Carrier, without regard to whether the telephone conversation originally began as a customer service or billing inquiry.
15. "Agent" means one or more persons, a corporation, a partnership, or other entity as the case may be, who enters into or has a relationship with Carrier where it sells Carrier's services on behalf of Carrier, and any sub-contractor, employee, servant, Affiliate or agent of said party.
16. "Affiliate" means a person, association, partnership, corporation or joint-stock company, trust, or other business entity that is controlled by Carrier by virtue of its ownership or voting interest.

**B. Disclosure of Material Rates and Terms During a Sales Transaction**

17. Carrier shall during a Sales Transaction or sale of an Enhanced Feature disclose clearly and conspicuously to Consumers all material terms and conditions of the offer to be purchased.
18. Carrier will implement procedures to provide to Consumers during a Sales Transaction

clear and conspicuous disclosures of, at a minimum, the following rates and terms of its Wireless Service rate plans and any Enhanced Features to be purchased, if applicable:

- a. rate plan area;
- b. recurring monthly service charges;
- c. number of peak and off-peak minutes;
- d. hours when peak and off-peak minutes apply;
- e. charge for overtime or excess minutes above allowance;
- f. charge for long distance minutes;
- g. charge for off-network or roaming minutes;
- h. minimum contract term;
- i. early termination fee;
- j. activation and/or other mandatory service initiation fees;
- k. material terms of its cancellation and return policy and any applicable charges;
- l. the fact that monthly taxes, surcharges, and other fees apply, including a listing of the name or type and amount (or, if applicable, a percentage formula as of a stated effective date) of any monthly discretionary charges that are generally assessed by Carrier on Consumers in a uniform dollar amount or percentage without regard to locale. For additional monthly discretionary charges that are assessed by Carrier on Consumers with regard to locale, Carrier shall clearly and conspicuously disclose that additional monthly fees will apply, depending on the customer's locale, and disclose the full possible range of total amounts (or



percentage) or the maximum possible total amount (or percentage) of such additional monthly discretionary charges.

m. for a promotional price, the disclosures required by paragraph 34 of this Assurance; and

n. for a free to pay conversion, the disclosures required by paragraph 23 of this Assurance.

19. Where a Sales Transaction occurs at Carrier's retail location, Carrier will implement procedures to provide Consumers with printed materials that Consumers may take and that contain clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

20. Where a Sales Transaction occurs via Carrier's website, Carrier will provide to Consumers clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance, including, but not limited to, a clear and conspicuous disclosure of such information before any click-through or other mechanism of acceptance required for a Consumer to accept Carrier's contract terms and conditions. These disclosures shall be in

electronic format that Consumers may print.

21. During a Sales Transaction that occurs during a telephone conversation between Carrier and a Consumer, and such sales technique is not prohibited under state law, Carrier shall instruct its Telephone Sales Representatives to make the disclosures required by paragraph 18 of this Assurance clearly and conspicuously and orally.

22. Where a Sales Transaction occurs during a telephone conversation between Carrier and a Consumer, Carrier will implement procedures to send within five (5) business days following the telephone conversation with a Consumer who does not have an existing relationship with Carrier and who purchases and enters into a contract for Wireless Service from Carrier, and within ten (10) business days following the telephone conversation with a Consumer who is an existing customer of Carrier and who renews or extends his or her Wireless Service contract for a fixed term, or changes Wireless Service rate plans, resulting in a new fixed term, written materials containing clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

23. A "free to pay conversion" means, in an offer or agreement to sell or provide any goods

or services, a provision under which a Consumer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if the Consumer does not take affirmative action to cancel before the end of the initial period. If Carrier offers any part of its Wireless Service or any Enhanced Service as a free to pay conversion, Carrier shall disclose, before the Consumer is bound by a contract with Carrier, the material terms and conditions of the free to pay conversion clearly and conspicuously, including, if applicable:

- a. The fact that the Consumer must cancel the free to pay conversion in order to avoid being charged;
- b. The date or deadline and method by which the Consumer must cancel to avoid being charged; and
- c. The cost of the good or service after the expiration of the free to pay conversion.

### C. Coverage

24. Carrier shall not misrepresent in its marketing and advertising materials that there is greater geographic service coverage available for its Wireless Service than actually exists.

25. When representing in its advertising and/or marketing materials that its coverage is "nationwide," "national," "coast-to-coast," or when using words of similar import to represent its coverage, Carrier shall disclose clearly and conspicuously the following conditions and limitations on such term:

- a. whether the advertised rate requires the Consumer to be on a particular wireless carrier's network or networks; and
- b. that coverage may not be available in all areas.

26. In addition to the disclosures required by Paragraph 25, for a period of at least three years following the Compliance Date, when representing in its advertising and/or marketing materials that its coverage is “nationwide,” “national,” “coast-to-coast,” or when using words of similar import to represent its coverage, Carrier shall disclose clearly and conspicuously in those advertising and marketing materials the basis for use of the term, which may include the population number covered by the plan, the number of major metropolitan areas covered by the plan, or a referral to the applicable coverage map and to the location where that coverage map is available. Carrier's obligation to clearly and conspicuously disclose the basis of such claim in its advertising and marketing materials shall continue thereafter if there is any material limitation to such coverage representation.

27. When advertising the availability of any Enhanced Feature, if such Enhanced Feature is not available in all areas where Carrier's Wireless Service is available, then Carrier shall disclose that fact clearly and conspicuously.

28. Carrier shall implement procedures to provide during a Sales Transaction at its retail locations, and provide on its website, maps depicting approximate Wireless Service coverage applicable to the Wireless Service rate plan(s) being sold. The maps will be at Carrier's retail locations in printed materials that Consumers may take with them and on Carrier's website as electronic documents that Consumers may print out. The maps will be generated using predictive modeling and mapping techniques commonly used by radio frequency engineers in the wireless service industry to depict approximate outdoor coverage, based on then-appropriate signal strength for the applicable wireless technology and signal strength confidence levels under normal operating conditions on Carrier's network, factoring in topographical conditions, and

subject to variables that impact radio service generally. All such maps will include a clear and conspicuous disclosure of material limitations in Wireless Service coverage depiction and Wireless Service availability. To assist Consumers in making comparisons among carriers, Carrier will make available to Consumers separate such maps depicting approximate Wireless Service coverage on a nationwide and regionwide basis as applicable to its Wireless Service rate plans that are currently offered to Consumers.

29. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by paragraph 28 of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by paragraph 28 of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

30. Carrier will request to exchange coverage maps based upon the above criteria with its roaming partners, so as to allow the roaming partners to incorporate the same into their own maps as necessary. To the extent Carrier is unable to obtain such maps from a roaming partner, Carrier may rely upon publicly or commercially available coverage information in creating its own maps.

#### **D. Cancellation Period for New Wireless Service**

31. When a Consumer initiates service with Carrier:

- a. The Consumer will be informed of and given a period of not less than 14 days after activation to try out the service. Carrier will not impose any early

termination fee if the Consumer cancels service within the 14-day period, and will refund any activation or other non-usage based fee charged to the Consumer if the Consumer cancels service within three days (not including national holidays) after activation, provided in each case that the Consumer complies in full with applicable return and/or exchange policies. If the Consumer will be responsible for any charges or fees for use of the service during the 14-day period, Carrier will clearly and conspicuously disclose this fact during the Sales Transaction. Any charge for airtime and charges based on usage must be based on actual usage (which may, if applicable, be calculated by prorating, either based on portion of month or billing cycle or based on the amount of minutes used in the applicable "bucket" of minutes). If any fees were waived during the Sales Transaction or at any time prior to cancellation, these fees may not be charged when the Consumer cancels during the 14-day period.

b. The Carrier's obligations under paragraph 31(a) shall expire in a Participating State 3 years after the Compliance Date, provided that Carrier has not been adjudged by a court, or where applicable, administrative agency, of competent jurisdiction in the Participating State to be in material violation of this Assurance. If prior to 3 years after the Compliance Date, Carrier is adjudged by a court, or where applicable, administrative agency, of competent jurisdiction in a Participating State to have materially violated this Assurance, Carrier shall continue to be subject to the obligations under paragraph 31(a) in the Participating State until the later of December 31, 2009 or three years from the



date of the last adjudication of a violation unless the operative adjudication is reversed by the highest appellate court that addresses the matter. This paragraph is in addition to all other remedies available to any Participating State in law and equity.

c. If Carrier changes its return policy, it shall provide advance notice with a description of the changes to the Attorney General of Tennessee and it shall clearly and conspicuously disclose its new return policy to Consumers prior to having Consumers enter into a Sales Transaction.

#### **E. Advertising**

32. Carrier shall not misrepresent, expressly or by implication, any term or condition of any of its products or services, including, but not limited to, cost.

33. In advertising materials stating prices for Wireless Service and/or Wireless Service devices, Carrier will disclose clearly and conspicuously all material terms and conditions associated with the stated price, pursuant to applicable law.

34. When advertising a promotional price or free offer for its Wireless Service or Enhanced Features, Carrier will clearly and conspicuously disclose material terms and conditions related to the promotional price, including, as applicable and in close proximity to the promotional price or free offer, any minimum term of service required to obtain that promotional price or free offer and the price after the promotional price or free offer expires within the minimum term.

35. When advertising a "free" Wireless Service device, Carrier will clearly and conspicuously disclose, in close proximity to the word "free," any material limitation on the word "free," including, if applicable: (a) the price of any Wireless Service device required to be

purchased to obtain the “free” Wireless Service device; and (b) any minimum term of Wireless Service required to obtain the “free” Wireless Service device.

**F. Disclosures of Taxes and Surcharges on Consumer Bills**

36. On Consumers' bills, Carrier will
- a. separate (i) taxes, fees, and other charges that Carrier is required to collect directly from Consumers and remit to federal, state, or local governments, or to third parties authorized by such governments, for the administration of government programs, from (ii) monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges (including, but not limited to, Universal Service Fund fees), except when such taxes, fees, and other charges are bundled in a single rate with the monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges; and
  - b. not represent, expressly or by implication, that discretionary cost recovery fees are taxes.

**G. Consumer Inquiries and Complaints**

37. Carrier will provide information about how Consumers can contact Carrier in writing, by toll-free telephone number or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to Consumer inquiries and on Carrier's website. Carrier will also make such contact information available, upon request, to any Consumer calling Carrier's customer service department.
38. Carrier shall respond within a reasonable time and in good faith to all consumer complaints or requests for adjustments received by Carrier with respect to the matters set forth in

this Assurance on an individual basis.

#### **H. Compliance Procedures**

39. Carrier shall develop and implement compliance procedures reasonably designed to ensure compliance by Carrier with the obligations contained in this Assurance. With respect to its Agents, Carrier shall (a) notify its Agents of the relevant provisions of this Assurance; (b) ensure that all advertisements provided by Carrier to its Agents for their use in the marketing and sale of Carrier's Wireless Service are in conformity with the terms of this Assurance; and (c) not direct its Agents to take any action or implement any practice that is in contravention of this Assurance.

#### **I. General Provisions**

40. Carrier agrees to pay a total of \$1,666,667.00 to the Attorneys General no later than fifteen (15) days after the effective date of this Assurance for attorneys fees or investigative costs, for consumer education, litigation or local consumer aid funds, or for public protection or consumer protection purposes, as allowed by each Participating State's law at the discretion of each Participating State's Attorney General.<sup>4</sup>

41. All court costs associated with this Assurance and its entry and approval shall be borne by Carrier and are included within the payment outlined in paragraph 40 of this Assurance. No

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<sup>4</sup> With respect to Arkansas, the funds shall be deposited in the consumer education and enforcement fund maintained by the Attorney General and shall be held in trust for uses directly related to the Attorney General's consumer protection efforts. With respect to Colorado, such funds, including interest thereon, shall be held by the Colorado Attorney General in trust to be used, first, for actual costs and attorney fees incurred by the Colorado Attorney General in this matter and, second, for consumer education and for consumer fraud and/or antitrust enforcement efforts. In Massachusetts, \$100,000 of the funds shall be used to reimburse the Commonwealth of Massachusetts for fees and costs and the remainder shall be deposited into the Local Consumer Aid Fund pursuant to M.G.L.c. 12, § 11G.

costs shall be imposed on any Participating State. Further, no discretionary costs shall be imposed on any Participating State.

42. Carrier is entering into this Assurance solely for the purposes of settlement. Nothing contained in this Assurance may be taken as or construed to be an admission by Carrier or as evidence supporting any of the allegations raised by the Attorneys General, any matter of fact or law, any violation of state or federal law, or any other liability or wrongdoing whatsoever, including without limitation an admission by Carrier that any of its business practices are or have been unfair or deceptive, or violate or have violated any of the Consumer Statutes of any of the Participating States, all of which Carrier expressly denies.

43. Further, to the extent that any changes in Carrier's business, advertising materials, and/or advertising practices are made to achieve or facilitate conformance to the terms of this Assurance, such changes shall not constitute any form of evidence or admission by Carrier, explicit or implicit, of wrongdoing or failure to comply with any federal or state statute or regulation or the common law.

44. There is no private right of action, explicit or implicit, created by this Assurance to enforce its terms; however, nothing in this Assurance shall be construed as a waiver of any Consumer's claims.

45. The subject matter of this Assurance is the issues covered by paragraphs 9 through 39 of this Assurance and Carrier's advertising materials and billing practices for its Wireless Service and Enhanced Features related to the issues covered by paragraphs 9 through 39 of this Assurance. The Attorneys General acknowledge that execution of this Assurance constitutes a complete settlement and release by the Participating States of all civil claims, causes of action,

damages, fines, costs, and penalties that were asserted or could have been asserted by the Attorneys General, either individually or collectively, on or prior to the effective date of this Assurance against Carrier, and/or any of its Affiliates, successors, employees, shareholders, officers, directors, Agents (but solely as to said Agents' actions at the direction of Carrier), and/or assigns relating to or based on the subject matter of this Assurance, pursuant to any consumer protection statutes or regulations reasonably construed to address marketing, sales or billing practices that the Attorneys General are authorized to enforce, including without limitation the Consumer Statutes set forth in footnote 3 of this Assurance and the regulations promulgated pursuant to such Consumer Statutes, but not including any statutes or regulations not reasonably construed to address marketing, sales or billing practices (including without limitation consumer credit codes, debt collection, antitrust laws, environmental laws and tax laws).

46. This Assurance shall be governed by the laws of the Participating States and is subject to court approval in those Participating States whose procedures require court approval. By entering into this Assurance, Carrier and the Attorneys General agree to all such court approvals, provided that there are no modifications to the terms of this Assurance without the express written consent of Carrier and the Attorneys General. This Assurance does not constitute an admission by Carrier of any Participating State's jurisdiction over it other than with respect to this Assurance, and does not alter any Participating State's jurisdiction over it.

47. Carrier represents that it has fully read and understood this Assurance, that it understands the legal consequences involved in signing this Assurance, and that there are no other representations or agreements between Carrier and the Attorneys General not stated in writing

herein.

48. Carrier represents and warrants that it is represented by legal counsel, that it is fully advised of its legal rights in this matter and that the person signing below is fully authorized to act on its behalf.

49. This Assurance shall bind Carrier and shall be binding on any and all of its Affiliates, successors, employees, shareholders, officers, directors, and assigns.

50. Carrier shall provide a copy of this Assurance and an accurate summary of the material terms of this Assurance to its senior executive officers who have managerial responsibility for the matters subject to this Assurance.

51. This Assurance shall be effective on July 21, 2004 (the "Effective Date"), but only so long as it has been signed by an authorized representative of Carrier and by authorized representatives of every Participating State, unless such condition expressly has been waived in whole or in part by Carrier. Unless provided otherwise in this Assurance, Carrier shall comply with the terms of this Assurance beginning one hundred twenty (120) days following the Effective Date (but one hundred eighty (180) days with respect to paragraphs 20, 22 and 36), or such later date or dates as Carrier and the Attorneys General otherwise may agree (the "Compliance Date"). In the event Carrier acquires or merges with another wireless carrier that is not subject to the terms of an assurance of voluntary compliance that is substantially similar to this Assurance, the Compliance Date shall be not less than nine months from the date of the closing of such merger or acquisition to bring the acquired operations into compliance with the terms hereof, provided, however, that (a) Carrier shall not unduly delay effecting compliance with any provisions of this Assurance that can reasonably be completed prior to the end of such



period; and (b) if Carrier makes a good faith showing that it is not commercially feasible to complete such compliance within such period, and requests an extension thereto, the Attorneys General shall not unreasonably withhold consent to such an extension of such period, provided that, and so long as, Carrier continues to work diligently toward completion of such efforts.

52. This Assurance contains the entire agreement between Carrier and the Attorneys General. Except as otherwise provided herein, this Assurance shall be modified as to any Participating State and/or Carrier only by a written instrument signed by or on behalf of the Attorney General of that Participating State and signed by or on behalf of Carrier. Carrier understands that in some Participating States court approval of any modification will be necessary. Carrier and the Attorneys General for such Participating States agree to use their best efforts to obtain such court approval.

53. Neither Carrier nor anyone acting on its behalf shall state or imply or cause to be stated or implied that a Participating State, an Attorney General, or any governmental unit of a Participating State has approved, sanctioned, or authorized any practice, act, advertising material, or conduct of Carrier.

54. Nothing in this Assurance shall be construed as a waiver of or limitation on Carrier's right to defend itself from or to make agreements in any private individual or class action, state, or federal claim, suit or proceeding relating to the existence, subject matter or terms of this Assurance.

55. Nothing contained in this Assurance shall be construed to deprive any Consumer or other person or entity of any private right under the law.

56. The titles and headers to each section of this Assurance are for convenience purposes

only and are not intended by Carrier or the Attorneys General to lend meaning to the actual terms of this Assurance.

57. This Assurance shall not be construed against the "drafter" because both Carrier and the Attorneys General participated in the drafting of this Assurance.

58. Nothing in this Assurance shall limit an Attorney General's right to obtain information, documents, or testimony from Carrier pursuant to any state or federal law or regulation.

59. If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance, and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or provision had not been contained herein.

60. Carrier will not participate directly or indirectly in the formation of a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or that would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

61. Nothing in this Assurance shall be construed to waive any claims of sovereign immunity that a Participating State may have in any action or proceeding.

62. Nothing in this Assurance shall be construed as relieving Carrier of its obligation to comply with all state and federal laws and regulations, nor shall any of the terms of this Assurance be deemed to grant Carrier permission to engage in any acts or practices prohibited by such laws and regulations.

63. As consideration for the relief agreed to herein, if the Attorney General of a Participating State determines that Carrier has failed to comply with any of the terms of this Assurance, and if

in the Attorney General's sole discretion the failure to comply does not threaten the health or safety of the citizens of the Participating State, the Attorney General will notify Carrier in writing of such failure to comply and Carrier shall then have ten (10) business days from receipt of such written notice to provide a good faith written response to the Attorney General's determination. The response shall include an affidavit containing, at a minimum, either:

- a. A statement explaining why Carrier believes it is in full compliance with the Assurance; or
- b. A detailed explanation of how the alleged violation(s) occurred; and
  - i. A statement that the alleged breach has been cured and how; or
  - ii. A statement that the alleged breach cannot be reasonably cured within ten (10) days from receipt of the notice, but (1) Carrier has begun to take corrective action to cure the alleged breach; (2) Carrier is pursuing such corrective action with reasonable and due diligence; and (3) Carrier has provided the Attorney General with a detailed and reasonable time table for curing the alleged breach.

64. Nothing herein shall prevent the Attorney General from agreeing in writing to provide Carrier with additional time beyond the ten (10) business day period to respond to the notice.

65. Nothing herein shall be construed to exonerate any contempt or failure to comply with any provision of this Assurance after the date of its entry, to compromise the authority of the Attorney General to initiate a proceeding for any contempt or other sanctions for failure to comply, or to compromise the authority of the court to punish as contempt any violation of this Assurance. Further, nothing in this subsection shall be construed to limit the authority of the Attorney General to protect the interests of the Participating State or the people of the

Participating State.

66. The Participating States represent that they will seek enforcement of the provisions of this Assurance with due regard for fairness.

67. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by the Federal government or any Federal agency, such as the FCC, and a court of competent jurisdiction holds that such statute or regulation is in conflict with any provision of this Assurance, Carrier may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance. Carrier shall provide advance written notice to the Attorney General of Tennessee of the inconsistent provision of the statute or regulation with which Carrier intends to comply under this paragraph 67, and of the counterpart provision of this Assurance which is in conflict with the statute or regulation.

68. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by a Participating State such that the statute or regulation is in conflict with any provision of this Assurance and such that Carrier cannot comply with both the statute or regulation and the provision of this Assurance, Carrier may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance. Carrier shall provide advance written notice to both the Attorney General of Tennessee and the Attorney General of the Participating State, of the inconsistent provision of the statute or regulation with which Carrier intends to comply under this paragraph 68, and of the counterpart provision of this Assurance which is in conflict with the statute or regulation.

#### **J. Modification of Certain Operational Provisions**

69. To seek a modification of this Assurance for any reason other than that provided for in paragraphs 67 or 68 of this Assurance, Carrier shall send a written request for modification to the Attorney General of Tennessee on behalf of the Participating States. The Participating States shall give such petition reasonable consideration and shall respond to Carrier within 30 days of receiving such request. At the conclusion of this 30 day period, Carrier reserves all rights to pursue any legal or equitable remedies that may be available to it.

In the Matter of Cingular Wireless LLC  
ASSURANCE OF VOLUNTARY COMPLIANCE

CINGULAR WIRELESS LLC

By: \_\_\_\_\_

(Name)

(Title)

Date:



In the Matter of Cingular Wireless LLC  
ASSURANCE OF VOLUNTARY COMPLIANCE

Dated: June 25, 2004

THOMAS F. REILLY  
Attorney General  
Commonwealth of Massachusetts

By:

\_\_\_\_\_  
Karlen J. Reed, BBO #635094  
Assistant Attorney General  
Utilities Division  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200

By:

\_\_\_\_\_  
Geoffrey G. Why, BBO #641267  
Assistant Attorney General  
Consumer Protection and Antitrust Division  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200

IN THE MATTER OF  
SPRINT SPECTRUM, L.P.

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)  
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### ASSURANCE OF VOLUNTARY COMPLIANCE

1. This Assurance of Voluntary Compliance<sup>1</sup> ("Assurance") is entered into by the Attorneys General<sup>2</sup> (collectively, "Attorneys General") of the States of Alabama, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Virginia, Wisconsin and Wyoming (collectively, "Participating States"), and Respondent Sprint/Sprint PCS.
2. Sprint Spectrum, L.P. is a limited partnership organized under the laws of the State of Delaware, with its principal place of business at 6200 Sprint Parkway, Overland Park, Kansas 66251 ("Carrier"). "Sprint" and "Sprint PCS" is the assumed names by which Carrier does business in the Participating States.

### BACKGROUND

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<sup>1</sup> This Assurance of Voluntary Compliance shall, for all necessary purposes, also be considered an Assurance of Discontinuance.

<sup>2</sup> Of the states listed, Georgia is represented by the Administrator of the Fair Business Practices Act, who is statutorily authorized to undertake consumer protection functions for the State of Georgia, including acceptance of Assurances of Voluntary Compliance. Hawaii is not represented by its Attorney General. Hawaii is represented by its Office of Consumer Protection, an agency which is not part of the state Attorney General's Office, but which is statutorily authorized to undertake consumer protection functions, including legal representation of the State of Hawaii. Tennessee is represented by the Attorney General, but the Tennessee Attorney General's Office enters into this Assurance in conjunction with the Tennessee Division of Consumer Affairs. For simplicity purposes, the entire group will be referred to as the "Attorneys General."

EXHIBIT

B

3. This Assurance follows an inquiry by the Attorneys General and communications between the Attorneys General and Carrier as to whether representations by Carrier in certain of its consumer advertising materials, including but not limited to, television advertising, print advertising, radio advertising, Internet websites, brochures and other consumer handouts, and billboards regarding its wireless voice service and associated data communications services violate the consumer protection and trade practice statutes listed herein at footnote 3 and/or the regulations promulgated pursuant to the same (collectively, "Consumer Statutes").<sup>3</sup>

4. Carrier provides wireless voice and data communications services and is licensed by the Federal Communications Commission ("FCC") to provide wireless telephone service. Carrier

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<sup>3</sup> Alabama Deceptive Trade Practices Act, Alabama Code 1975 § 8-19-1, *et seq.*; Arkansas Code Ann. § 4-88-101 *et seq.*; Colorado Consumer Protection Act, § 6-1-101, *et seq.*, C.R.S. (2003); 6 Delaware Code § 2511 *et seq.*; Georgia Fair Business Practices Act of 1975, O.C.G.A. 10-1-390, *et seq.*; Hawaii Rev. Stat. § 480-2 and § 487-5(6); Idaho Code § 48-601 *et seq.*; Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.*; Illinois Uniform Deceptive Trade Practices Act, § 815 ILCS 510/1, *et seq.*; Iowa Consumer Fraud Act, Iowa Code § 714.16; Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*; Maine Unfair Trade Practices Act, 5 M.R.S.A. § 205-A *et seq.*; Maryland Consumer Protection Act, Maryland Commercial Law Code Annotated § 13-101 *et seq.*; Massachusetts Consumer Protection Act M.G.L. c. 93A §§ 1-11; Michigan Consumer Protection Act, M.C.L. 445.901 *et seq.*, M.S.A. 19.418 (1) *et seq.* (1994); Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1 (Rev. 2000); Montana MCA 30-14-101 *et seq.*; Nebraska Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601 *et seq.*; and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. §§ 87-301 *et seq.* (1994); Nevada Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 to 598.0999; New Hampshire Rev. Stat. Ann. 358-A; New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*; New Mexico Unfair Trade Practices Act, NMSA § 57-12-1 *et seq.*, (1978); North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1, *et seq.*; North Dakota Century Code (NDCC) Sections 51-15-01, *et seq.*; Ohio Consumer Sales Practices Act, R.C. § 1345.01 *et seq.*; Oklahoma Consumer Protection Act 15 O.S. §§ 751 *et seq.*; Oregon Unlawful Trade Practices Act, ORS 646.605 *et seq.*; South Dakota Deceptive Trade Practices Act, SDCL Ch. 37-24; Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*; Texas Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. and Com. Code § 17.41 *et seq.*, (West 1993); The Virginia Consumer Protection Act, Va. Code Section 59.1-196 *et seq.*; Wisconsin Statutes §§ 100.18(1) and 100.207; and Wyoming Consumer Protection Act, Wyo. Stat. Ann. §§ 40-12-101 *et seq.* (2003).

supplements its FCC licensed areas with contractual roaming agreements that it has entered into with third party wireless companies.

5. Carrier runs advertising for its wireless voice and data communications services in different media in many states. Certain of its advertising materials promote different wireless service pricing plans offered in different parts of the country.

6. Carrier distributes advertising materials to Consumers in retail outlets in many states. These materials explain the company's wireless service pricing plans and wireless voice and data communications services.

7. Carrier believes that it is, and at all times has been, in compliance with the Consumer Statutes. Carrier further believes that its advertising materials always have been accurate and complete and always have disclosed all necessary material information, including all material limitations in Carrier's wireless service and all material rate information, clearly and conspicuously. As a matter of corporate policy, Carrier believes it always has adhered, and continues to adhere, to pro-individual consumer and pro-business consumer business practices and follows the highest ethical standards, which constitute best practices in the wireless industry.

8. Carrier believes it has cooperated fully with the Attorneys General throughout their inquiry. Although Carrier denies it has engaged in unlawful or otherwise inappropriate business practices, Carrier agrees to this Assurance so that this matter may be resolved amicably, without further cost or inconvenience to the Participating States, their citizens or Carrier, and to avoid the cost and inconvenience to Carrier that will result if the Participating States subject Carrier to different advertising and business requirements in each Participating State.

#### **TERMS OF ASSURANCE**

### A. Definitions

For purposes of this Assurance, the following definitions shall apply:

9. A statement is “clear and conspicuous” if it is disclosed in such size, color, contrast, location, duration, and/or audibility that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies or is necessary to prevent other information from being misleading or deceptive, then the statement must be presented in proximity to that information, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner. In addition:

- a. A radio disclosure must be delivered in a volume, cadence and location sufficient for a consumer to hear and comprehend it;
- b. A television disclosure must (i) appear in video in a type size, shade and location, and remain on the screen for a sufficient duration, for a consumer to read and comprehend it, and/or (ii) be delivered in audio in a volume, cadence and location sufficient for a consumer to hear and comprehend it;
- c. A print or Internet disclosure must appear in a type size, contrast and location sufficient for a consumer to read and comprehend it.

10. “Wireless Service” means any basic voice wireless service offered by a commercial mobile radio service provider.

11. “Enhanced Feature” means any communications service associated with Wireless Service, including without limitation paging, voice mail, wireless Internet, text messaging and personal information services.

12. "Consumer" means an individual or business, as defined by and in accordance with a Participating State's Consumer Statute, residing in a Participating State.
13. "Sales Transaction" means a transaction in which (i) a Consumer who is not a current customer of Carrier purchases and enters in a contract for Wireless Service from Carrier, or (ii) a Consumer who is a current customer of Carrier renews or extends his or her contract for a fixed term, or changes Wireless Service rate plans, without regard to whether the rate plan change results in a new fixed term. For purposes of this Assurance, "fixed term" refers to a Wireless Service contract with a term of greater than one month.
14. "Telephone Sales Representative" means anyone who makes any representations to any Consumer via a telephone conversation regarding Carrier's Wireless Service for the purpose of inducing the Consumer to enter into a Sales Transaction with Carrier, without regard to whether the telephone conversation originally began as a customer service or billing inquiry.
15. "Agent" means one or more persons, a corporation, a partnership, or other entity as the case may be, who enters into or has a relationship with Carrier where it sells Carrier's services on behalf of Carrier, and any sub-contractor, employee, servant, Affiliate or agent of said party.
16. "Affiliate" means a person, association, partnership, corporation or joint-stock company, trust, or other business entity that is controlled by Carrier by virtue of its ownership or voting interest.

**B. Disclosure of Material Rates and Terms During a Sales Transaction**

17. Carrier shall during a Sales Transaction or sale of an Enhanced Feature disclose clearly and conspicuously to Consumers all material terms and conditions of the offer to be purchased.
18. Carrier will implement procedures to provide to Consumers during a Sales Transaction

clear and conspicuous disclosures of, at a minimum, the following rates and terms of its Wireless Service rate plans and any Enhanced Features to be purchased, if applicable:

- a. rate plan area;
- b. recurring monthly service charges;
- c. number of peak and off-peak minutes;
- d. hours when peak and off-peak minutes apply;
- e. charge for overtime or excess minutes above allowance;
- f. charge for long distance minutes;
- g. charge for off-network or roaming minutes;
- h. minimum contract term;
- i. early termination fee;
- j. activation and/or other mandatory service initiation fees;
- k. material terms of its cancellation and return policy and any applicable charges;
- l. the fact that monthly taxes, surcharges, and other fees apply, including a listing of the name or type and amount (or, if applicable, a percentage formula as of a stated effective date) of any monthly discretionary charges that are generally assessed by Carrier on Consumers in a uniform dollar amount or percentage without regard to locale. For additional monthly discretionary charges that are assessed by Carrier on Consumers with regard to locale, Carrier shall clearly and conspicuously disclose that additional monthly fees will apply, depending on the customer's locale, and disclose the full possible range of total amounts (or

percentage) or the maximum possible total amount (or percentage) of such additional monthly discretionary charges.

m. for a promotional price, the disclosures required by paragraph 34 of this Assurance; and

n. for a free to pay conversion, the disclosures required by paragraph 23 of this Assurance.

19. Where a Sales Transaction occurs at Carrier's retail location, Carrier will implement procedures to provide Consumers with printed materials that Consumers may take and that contain clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

20. Where a Sales Transaction occurs via Carrier's website, Carrier will provide to Consumers clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance, including, but not limited to, a clear and conspicuous disclosure of such information before any click-through or other mechanism of acceptance required for a Consumer to accept Carrier's contract terms and conditions. These disclosures shall be in



electronic format that Consumers may print.

21. During a Sales Transaction that occurs during a telephone conversation between Carrier and a Consumer, and such sales technique is not prohibited under state law, Carrier shall instruct its Telephone Sales Representatives to make the disclosures required by paragraph 18 of this Assurance clearly and conspicuously and orally.

22. Where a Sales Transaction occurs during a telephone conversation between Carrier and a Consumer, Carrier will implement procedures to send within five (5) business days following the telephone conversation with a Consumer who does not have an existing relationship with Carrier and who purchases and enters into a contract for Wireless Service from Carrier, and within ten (10) business days following the telephone conversation with a Consumer who is an existing customer of Carrier and who renews or extends his or her Wireless Service contract for a fixed term, or changes Wireless Service rate plans, resulting in a new fixed term, written materials containing clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

23. A "free to pay conversion" means, in an offer or agreement to sell or provide any goods

or services, a provision under which a Consumer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if the Consumer does not take affirmative action to cancel before the end of the initial period. If Carrier offers any part of its Wireless Service or any Enhanced Service as a free to pay conversion, Carrier shall disclose, before the Consumer is bound by a contract with Carrier, the material terms and conditions of the free to pay conversion clearly and conspicuously, including, if applicable:

- a. The fact that the Consumer must cancel the free to pay conversion in order to avoid being charged;
- b. The date or deadline and method by which the Consumer must cancel to avoid being charged; and
- c. The cost of the good or service after the expiration of the free to pay conversion.

### **C. Coverage**

24. Carrier shall not misrepresent in its marketing and advertising materials that there is greater geographic service coverage available for its Wireless Service than actually exists.

25. When representing in its advertising and/or marketing materials that its coverage is “nationwide,” “national,” “coast-to-coast,” or when using words of similar import to represent its coverage, Carrier shall disclose clearly and conspicuously the following conditions and limitations on such term:

- a. whether the advertised rate requires the Consumer to be on a particular wireless carrier’s network or networks; and
- b. that coverage may not be available in all areas.

26. In addition to the disclosures required by Paragraph 25, for a period of at least three years following the Compliance Date, when representing in its advertising and/or marketing materials that its coverage is "nationwide," "national," "coast-to-coast," or when using words of similar import to represent its coverage, Carrier shall disclose clearly and conspicuously in those advertising and marketing materials the basis for use of the term, which may include the population number covered by the plan, the number of major metropolitan areas covered by the plan, or a referral to the applicable coverage map and to the location where that coverage map is available. Carrier's obligation to clearly and conspicuously disclose the basis of such claim in its advertising and marketing materials shall continue thereafter if there is any material limitation to such coverage representation.

27. When advertising the availability of any Enhanced Feature, if such Enhanced Feature is not available in all areas where Carrier's Wireless Service is available, then Carrier shall disclose that fact clearly and conspicuously.

28. Carrier shall implement procedures to provide during a Sales Transaction at its retail locations, and provide on its website, maps depicting approximate Wireless Service coverage applicable to the Wireless Service rate plan(s) being sold. The maps will be at Carrier's retail locations in printed materials that Consumers may take with them and on Carrier's website as electronic documents that Consumers may print out. The maps will be generated using predictive modeling and mapping techniques commonly used by radio frequency engineers in the wireless service industry to depict approximate outdoor coverage, based on then-appropriate signal strength for the applicable wireless technology and signal strength confidence levels under normal operating conditions on Carrier's network, factoring in topographical conditions, and

subject to variables that impact radio service generally. All such maps will include a clear and conspicuous disclosure of material limitations in Wireless Service coverage depiction and Wireless Service availability. To assist Consumers in making comparisons among carriers, Carrier will make available to Consumers separate such maps depicting approximate Wireless Service coverage on a nationwide and regionwide basis as applicable to its Wireless Service rate plans that are currently offered to Consumers.

29. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by paragraph 28 of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by paragraph 28 of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

30. Carrier will request to exchange coverage maps based upon the above criteria with its roaming partners, so as to allow the roaming partners to incorporate the same into their own maps as necessary. To the extent Carrier is unable to obtain such maps from a roaming partner, Carrier may rely upon publicly or commercially available coverage information in creating its own maps.

#### **D. Cancellation Period for New Wireless Service**

31. When a Consumer initiates service with Carrier:

- a. The Consumer will be informed of and given a period of not less than 14 days after activation to try out the service. Carrier will not impose any early

termination fee if the Consumer cancels service within the 14-day period, and will refund any activation or other non-usage based fee charged to the Consumer if the Consumer cancels service within three days (not including national holidays) after activation, provided in each case that the Consumer complies in full with applicable return and/or exchange policies. If the Consumer will be responsible for any charges or fees for use of the service during the 14-day period, Carrier will clearly and conspicuously disclose this fact during the Sales Transaction. Any charge for airtime and charges based on usage must be based on actual usage (which may, if applicable, be calculated by prorating, either based on portion of month or billing cycle or based on the amount of minutes used in the applicable "bucket" of minutes). If any fees were waived during the Sales Transaction or at any time prior to cancellation, these fees may not be charged when the Consumer cancels during the 14-day period.

b. The Carrier's obligations under paragraph 31(a) shall expire in a Participating State 3 years after the Compliance Date, provided that Carrier has not been adjudged by a court, or where applicable, administrative agency, of competent jurisdiction in the Participating State to be in material violation of this Assurance. If prior to 3 years after the Compliance Date, Carrier is adjudged by a court, or where applicable, administrative agency, of competent jurisdiction in a Participating State to have materially violated this Assurance, Carrier shall continue to be subject to the obligations under paragraph 31(a) in the Participating State until the later of December 31, 2009 or three years from the

date of the last adjudication of a violation unless the operative adjudication is reversed by the highest appellate court that addresses the matter. This paragraph is in addition to all other remedies available to any Participating State in law and equity.

c. If Carrier changes its return policy, it shall provide advance notice with a description of the changes to the Attorney General of Tennessee and it shall clearly and conspicuously disclose its new return policy to Consumers prior to having Consumers enter into a Sales Transaction.

#### **E. Advertising**

32. Carrier shall not misrepresent, expressly or by implication, any term or condition of any of its products or services, including, but not limited to, cost.

33. In advertising materials stating prices for Wireless Service and/or Wireless Service devices, Carrier will disclose clearly and conspicuously all material terms and conditions associated with the stated price, pursuant to applicable law.

34. When advertising a promotional price or free offer for its Wireless Service or Enhanced Features, Carrier will clearly and conspicuously disclose material terms and conditions related to the promotional price, including, as applicable and in close proximity to the promotional price or free offer, any minimum term of service required to obtain that promotional price or free offer and the price after the promotional price or free offer expires within the minimum term.

35. When advertising a "free" Wireless Service device, Carrier will clearly and conspicuously disclose, in close proximity to the word "free," any material limitation on the word "free," including, if applicable: (a) the price of any Wireless Service device required to be

purchased to obtain the “free” Wireless Service device; and (b) any minimum term of Wireless Service required to obtain the “free” Wireless Service device.

**F. Disclosures of Taxes and Surcharges on Consumer Bills**

36. On Consumers' bills, Carrier will

- a. separate (i) taxes, fees, and other charges that Carrier is required to collect directly from Consumers and remit to federal, state, or local governments, or to third parties authorized by such governments, for the administration of government programs, from (ii) monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges (including, but not limited to, Universal Service Fund fees), except when such taxes, fees, and other charges are bundled in a single rate with the monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges; and
- b. not represent, expressly or by implication, that discretionary cost recovery fees are taxes.

**G. Consumer Inquiries and Complaints**

37. Carrier will provide information about how Consumers can contact Carrier in writing, by toll-free telephone number or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to Consumer inquiries and on Carrier's website. Carrier will also make such contact information available, upon request, to any Consumer calling Carrier's customer service department.

38. Carrier shall respond within a reasonable time and in good faith to all consumer complaints or requests for adjustments received by Carrier with respect to the matters set forth in

this Assurance on an individual basis.

#### **H. Compliance Procedures**

39. Carrier shall develop and implement compliance procedures reasonably designed to ensure compliance by Carrier with the obligations contained in this Assurance. With respect to its Agents, Carrier shall (a) notify its Agents of the relevant provisions of this Assurance; (b) ensure that all advertisements provided by Carrier to its Agents for their use in the marketing and sale of Carrier's Wireless Service are in conformity with the terms of this Assurance; and (c) not direct its Agents to take any action or implement any practice that is in contravention of this Assurance.

#### **I. General Provisions**

40. Carrier agrees to pay a total of \$1,666,667.00 to the Attorneys General no later than fifteen (15) days after the effective date of this Assurance for attorneys fees or investigative costs, for consumer education, litigation or local consumer aid funds, or for public protection or consumer protection purposes, as allowed by each Participating State's law at the discretion of each Participating State's Attorney General.<sup>4</sup>

41. All court costs associated with this Assurance and its entry and approval shall be borne by Carrier and are included within the payment outlined in paragraph 40 of this Assurance. No

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<sup>4</sup> With respect to Arkansas, the funds shall be deposited in the consumer education and enforcement fund maintained by the Attorney General and shall be held in trust for uses directly related to the Attorney General's consumer protection efforts. With respect to Colorado, such funds, including interest thereon, shall be held by the Colorado Attorney General in trust to be used, first, for actual costs and attorney fees incurred by the Colorado Attorney General in this matter and, second, for consumer education and for consumer fraud and/or antitrust enforcement efforts. In Massachusetts, \$100,000 of the funds shall be used to reimburse the Commonwealth of Massachusetts for fees and costs and the remainder shall be deposited into the Local Consumer Aid Fund pursuant to M.G.L.c. 12, § 11G.



costs shall be imposed on any Participating State. Further, no discretionary costs shall be imposed on any Participating State.

42. Carrier is entering into this Assurance solely for the purposes of settlement. Nothing contained in this Assurance may be taken as or construed to be an admission by Carrier or as evidence supporting any of the allegations raised by the Attorneys General, any matter of fact or law, any violation of state or federal law, or any other liability or wrongdoing whatsoever, including without limitation an admission by Carrier that any of its business practices are or have been unfair or deceptive, or violate or have violated any of the Consumer Statutes of any of the Participating States, all of which Carrier expressly denies.

43. Further, to the extent that any changes in Carrier's business, advertising materials, and/or advertising practices are made to achieve or facilitate conformance to the terms of this Assurance, such changes shall not constitute any form of evidence or admission by Carrier, explicit or implicit, of wrongdoing or failure to comply with any federal or state statute or regulation or the common law.

44. There is no private right of action, explicit or implicit, created by this Assurance to enforce its terms; however, nothing in this Assurance shall be construed as a waiver of any Consumer's claims.

45. The subject matter of this Assurance is the issues covered by paragraphs 9 through 39 of this Assurance and Carrier's advertising materials and billing practices for its Wireless Service and Enhanced Features related to the issues covered by paragraphs 9 through 39 of this Assurance. The Attorneys General acknowledge that execution of this Assurance constitutes a complete settlement and release by the Participating States of all civil claims, causes of action,

damages, fines, costs, and penalties that were asserted or could have been asserted by the Attorneys General, either individually or collectively, on or prior to the effective date of this Assurance against Carrier, and/or any of its Affiliates, successors, employees, shareholders, officers, directors, Agents (but solely as to said Agents' actions at the direction of Carrier), and/or assigns relating to or based on the subject matter of this Assurance, pursuant to any consumer protection statutes or regulations reasonably construed to address marketing, sales or billing practices that the Attorneys General are authorized to enforce, including without limitation the Consumer Statutes set forth in footnote 3 of this Assurance and the regulations promulgated pursuant to such Consumer Statutes, but not including any statutes or regulations not reasonably construed to address marketing, sales or billing practices (including without limitation consumer credit codes, debt collection, antitrust laws, environmental laws and tax laws).

46. This Assurance shall be governed by the laws of the Participating States and is subject to court approval in those Participating States whose procedures require court approval. By entering into this Assurance, Carrier and the Attorneys General agree to all such court approvals, provided that there are no modifications to the terms of this Assurance without the express written consent of Carrier and the Attorneys General. This Assurance does not constitute an admission by Carrier of any Participating State's jurisdiction over it other than with respect to this Assurance, and does not alter any Participating State's jurisdiction over it.

47. Carrier represents that it has fully read and understood this Assurance, that it understands the legal consequences involved in signing this Assurance, and that there are no other representations or agreements between Carrier and the Attorneys General not stated in writing

herein.

48. Carrier represents and warrants that it is represented by legal counsel, that it is fully advised of its legal rights in this matter and that the person signing below is fully authorized to act on its behalf.

49. This Assurance shall bind Carrier and shall be binding on any and all of its Affiliates, successors, employees, shareholders, officers, directors, and assigns.

50. Carrier shall provide a copy of this Assurance and an accurate summary of the material terms of this Assurance to its senior executive officers who have managerial responsibility for the matters subject to this Assurance.

51. This Assurance shall be effective on July 21, 2004 (the "Effective Date"), but only so long as it has been signed by an authorized representative of Carrier and by authorized representatives of every Participating State, unless such condition expressly has been waived in whole or in part by Carrier. Unless provided otherwise in this Assurance, Carrier shall comply with the terms of this Assurance beginning one hundred twenty (120) days following the Effective Date (but one hundred eighty (180) days with respect to paragraphs 20, 22 and 36), or such later date or dates as Carrier and the Attorneys General otherwise may agree (the "Compliance Date"). In the event Carrier acquires or merges with another wireless carrier that is not subject to the terms of an assurance of voluntary compliance that is substantially similar to this Assurance, the Compliance Date shall be not less than nine months from the date of the closing of such merger or acquisition to bring the acquired operations into compliance with the terms hereof, provided, however, that (a) Carrier shall not unduly delay effecting compliance with any provisions of this Assurance that can reasonably be completed prior to the end of such

period; and (b) if Carrier makes a good faith showing that it is not commercially feasible to complete such compliance within such period, and requests an extension thereto, the Attorneys General shall not unreasonably withhold consent to such an extension of such period, provided that, and so long as, Carrier continues to work diligently toward completion of such efforts.

52. This Assurance contains the entire agreement between Carrier and the Attorneys General. Except as otherwise provided herein, this Assurance shall be modified as to any Participating State and/or Carrier only by a written instrument signed by or on behalf of the Attorney General of that Participating State and signed by or on behalf of Carrier. Carrier understands that in some Participating States court approval of any modification will be necessary. Carrier and the Attorneys General for such Participating States agree to use their best efforts to obtain such court approval.

53. Neither Carrier nor anyone acting on its behalf shall state or imply or cause to be stated or implied that a Participating State, an Attorney General, or any governmental unit of a Participating State has approved, sanctioned, or authorized any practice, act, advertising material, or conduct of Carrier.

54. Nothing in this Assurance shall be construed as a waiver of or limitation on Carrier's right to defend itself from or to make agreements in any private individual or class action, state, or federal claim, suit or proceeding relating to the existence, subject matter or terms of this Assurance.

55. Nothing contained in this Assurance shall be construed to deprive any Consumer or other person or entity of any private right under the law.

56. The titles and headers to each section of this Assurance are for convenience purposes

only and are not intended by Carrier or the Attorneys General to lend meaning to the actual terms of this Assurance.

57. This Assurance shall not be construed against the "drafter" because both Carrier and the Attorneys General participated in the drafting of this Assurance.

58. Nothing in this Assurance shall limit an Attorney General's right to obtain information, documents, or testimony from Carrier pursuant to any state or federal law or regulation.

59. If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance, and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or provision had not been contained herein.

60. Carrier will not participate directly or indirectly in the formation of a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or that would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

61. Nothing in this Assurance shall be construed to waive any claims of sovereign immunity that a Participating State may have in any action or proceeding.

62. Nothing in this Assurance shall be construed as relieving Carrier of its obligation to comply with all state and federal laws and regulations, nor shall any of the terms of this Assurance be deemed to grant Carrier permission to engage in any acts or practices prohibited by such laws and regulations.

63. As consideration for the relief agreed to herein, if the Attorney General of a Participating State determines that Carrier has failed to comply with any of the terms of this Assurance, and if

in the Attorney General's sole discretion the failure to comply does not threaten the health or safety of the citizens of the Participating State, the Attorney General will notify Carrier in writing of such failure to comply and Carrier shall then have ten (10) business days from receipt of such written notice to provide a good faith written response to the Attorney General's determination. The response shall include an affidavit containing, at a minimum, either:

- a. A statement explaining why Carrier believes it is in full compliance with the Assurance; or
- b. A detailed explanation of how the alleged violation(s) occurred; and
  - i. A statement that the alleged breach has been cured and how; or
  - ii. A statement that the alleged breach cannot be reasonably cured within ten (10) days from receipt of the notice, but (1) Carrier has begun to take corrective action to cure the alleged breach; (2) Carrier is pursuing such corrective action with reasonable and due diligence; and (3) Carrier has provided the Attorney General with a detailed and reasonable time table for curing the alleged breach.

64. Nothing herein shall prevent the Attorney General from agreeing in writing to provide Carrier with additional time beyond the ten (10) business day period to respond to the notice.

65. Nothing herein shall be construed to exonerate any contempt or failure to comply with any provision of this Assurance after the date of its entry, to compromise the authority of the Attorney General to initiate a proceeding for any contempt or other sanctions for failure to comply, or to compromise the authority of the court to punish as contempt any violation of this Assurance. Further, nothing in this subsection shall be construed to limit the authority of the Attorney General to protect the interests of the Participating State or the people of the

Participating State.

66. The Participating States represent that they will seek enforcement of the provisions of this Assurance with due regard for fairness.

67. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by the Federal government or any Federal agency, such as the FCC, and a court of competent jurisdiction holds that such statute or regulation is in conflict with any provision of this Assurance, Carrier may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance. Carrier shall provide advance written notice to the Attorney General of Tennessee of the inconsistent provision of the statute or regulation with which Carrier intends to comply under this paragraph 67, and of the counterpart provision of this Assurance which is in conflict with the statute or regulation.

68. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by a Participating State such that the statute or regulation is in conflict with any provision of this Assurance and such that Carrier cannot comply with both the statute or regulation and the provision of this Assurance, Carrier may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance. Carrier shall provide advance written notice to both the Attorney General of Tennessee and the Attorney General of the Participating State, of the inconsistent provision of the statute or regulation with which Carrier intends to comply under this paragraph 68, and of the counterpart provision of this Assurance which is in conflict with the statute or regulation.

#### **J. Modification of Certain Operational Provisions**

69. To seek a modification of this Assurance for any reason other than that provided for in paragraphs 67 or 68 of this Assurance, Carrier shall send a written request for modification to the Attorney General of Tennessee on behalf of the Participating States. The Participating States shall give such petition reasonable consideration and shall respond to Carrier within 30 days of receiving such request. At the conclusion of this 30 day period, Carrier reserves all rights to pursue any legal or equitable remedies that may be available to it.



In the Matter of Sprint Spectrum, L.P.  
ASSURANCE OF VOLUNTARY COMPLIANCE

Sprint Spectrum, L.P.

By: \_\_\_\_\_

(Name)

(Title)

Date:

In the Matter of Sprint Spectrum, L.P.  
ASSURANCE OF VOLUNTARY COMPLIANCE

Dated: June 25, 2004

THOMAS F. REILLY  
Attorney General  
Commonwealth of Massachusetts

By:

\_\_\_\_\_  
Karlen J. Reed, BBO #635094  
Assistant Attorney General  
Utilities Division  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200

By:

\_\_\_\_\_  
Geoffrey G. Why, BBO #641267  
Assistant Attorney General  
Consumer Protection and Antitrust Division  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200

IN THE MATTER OF  
CELLCO PARTNERSHIP  
d/b/a VERIZON WIRELESS

)  
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**ASSURANCE OF VOLUNTARY COMPLIANCE**

1. This Assurance of Voluntary Compliance<sup>1</sup> ("Assurance") is entered into by the Attorneys General<sup>2</sup> (collectively, "Attorneys General") of the States of Alabama, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Virginia, Wisconsin and Wyoming (collectively, "Participating States"), and Respondent Verizon Wireless.
2. Cellco Partnership is a general partnership formed under the laws of the State of Delaware, with its principal place of business at 180 Washington Valley Road, Bedminster, New Jersey 07921 ("Carrier"). "Verizon Wireless" is the doing business as name by which the Carrier does business in the Participating States.

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<sup>1</sup> This Assurance of Voluntary Compliance shall, for all necessary purposes, also be considered an Assurance of Discontinuance.

<sup>2</sup> Of the states listed, Georgia is represented by the Administrator of the Fair Business Practices Act, who is statutorily authorized to undertake consumer protection functions for the State of Georgia, including acceptance of Assurances of Voluntary Compliance. Hawaii is not represented by its Attorney General. Hawaii is represented by its Office of Consumer Protection, an agency which is not part of the state Attorney General's Office, but which is statutorily authorized to undertake consumer protection functions, including legal representation of the State of Hawaii. Tennessee is represented by the Attorney General, but the Tennessee Attorney General's Office enters into this Assurance in conjunction with the Tennessee Division of Consumer Affairs. For simplicity purposes, the entire group will be referred to as the "Attorneys General."

**EXHIBIT**

C

## BACKGROUND

3. This Assurance follows an inquiry by the Attorneys General and communications between the Attorneys General and Carrier as to whether representations by Carrier in certain of its consumer advertising materials, including but not limited to, television advertising, print advertising, radio advertising, Internet websites, brochures and other consumer handouts, and billboards regarding its wireless voice service and associated data communications services violate the consumer protection and trade practice statutes listed herein at footnote 3 and/or the regulations promulgated pursuant to the same (collectively, "Consumer Statutes").<sup>3</sup>

4. Carrier provides wireless voice and data communications services and is licensed by the

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<sup>3</sup> Alabama Deceptive Trade Practices Act, Alabama Code 1975 § 8-19-1, *et seq.*; Arkansas Code Ann. § 4-88-101 *et seq.*; Colorado Consumer Protection Act, § 6-1-101, *et seq.*, C.R.S. (2003); 6 Delaware Code § 2511 *et seq.*; Georgia Fair Business Practices Act of 1975, O.C.G.A. 10-1-390, *et seq.*; Hawaii Rev. Stat. § 480-2 and § 487-5(6); Idaho Code § 48-601 *et seq.*; Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS § 505/1 *et seq.*; Illinois Uniform Deceptive Trade Practices Act, § 815 ILCS 510/1, *et seq.*; Iowa Consumer Fraud Act, Iowa Code § 714.16; Kansas Consumer Protection Act, K.S.A. 50-623 *et seq.*; Maine Unfair Trade Practices Act, 5 M.R.S.A. § 205-A *et seq.*; Maryland Consumer Protection Act, Maryland Commercial Law Code Annotated § 13-101 *et seq.*; Massachusetts Consumer Protection Act M.G.L. c. 93A §§ 1-11; Michigan Consumer Protection Act, M.C.L. 445.901 *et seq.*, M.S.A. 19.418 (1) *et seq.* (1994); Mississippi Consumer Protection Act, Miss. Code Ann. §§ 75-24-1 (Rev. 2000); Montana MCA 30-14-101 *et seq.*; Nebraska Consumer Protection Act, Neb. Rev. Stat. §§ 59-1601 *et seq.* and the Uniform Deceptive Trade Practices Act, Neb. Rev. Stat. §§ 87-301 *et seq.* (1994); Nevada Deceptive Trade Practices Act, Nevada Revised Statutes 598.0903 to 598.0999; New Hampshire Rev. Stat. Ann. 358-A; New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.*; New Mexico Unfair Trade Practices Act, NMSA § 57-12-1 *et seq.*, (1978); North Carolina Unfair and Deceptive Trade Practices Act, N.C.G.S. § 75-1.1, *et seq.*; North Dakota Century Code (NDCC) Sections 51-15-01, *et seq.*; Ohio Consumer Sales Practices Act, R.C. § 1345.01 *et seq.*; Oklahoma Consumer Protection Act 15 O.S. §§ 751 *et seq.*; Oregon Unlawful Trade Practices Act, ORS 646.605 *et seq.*; South Dakota Deceptive Trade Practices Act, SDCL Ch. 37-24; Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*; Texas Deceptive Trade Practices and Consumer Protection Act, Tex. Bus. and Com. Code § 17.41 *et seq.*, (West 1993); The Virginia Consumer Protection Act, Va. Code Section 59.1-196 *et seq.*; Wisconsin Statutes §§ 100.18(1) and 100.207; and Wyoming Consumer Protection Act, Wyo. Stat. Ann. §§ 40-12-101 *et seq.* (2003).

Federal Communications Commission ("FCC") to provide wireless telephone service. Carrier supplements its FCC licensed areas with contractual roaming agreements that it has entered into with third party wireless companies.

5. Carrier runs advertising for its wireless voice and data communications services in different media in many states. Certain of its advertising materials promote different wireless service pricing plans offered in different parts of the country.

6. Carrier distributes advertising materials to Consumers in retail outlets in many states. These materials explain the company's wireless service pricing plans and wireless voice and data communications services.

7. Carrier believes that it is, and at all times has been, in compliance with the Consumer Statutes. Carrier further believes that its advertising materials always have been accurate and complete and always have disclosed all necessary material information, including all material limitations in Carrier's wireless service and all material rate information, clearly and conspicuously. As a matter of corporate policy, Carrier believes it always has adhered, and continues to adhere, to pro-individual consumer and pro-business consumer business practices and follows the highest ethical standards, which constitute best practices in the wireless industry.

8. Carrier believes it has cooperated fully with the Attorneys General throughout their inquiry. Although Carrier denies it has engaged in unlawful or otherwise inappropriate business practices, Carrier agrees to this Assurance so that this matter may be resolved amicably, without further cost or inconvenience to the Participating States, their citizens or Carrier, and to avoid the cost and inconvenience to Carrier that will result if the Participating States subject Carrier to different advertising and business requirements in each Participating State.

## **TERMS OF ASSURANCE**

### **A. Definitions**

For purposes of this Assurance, the following definitions shall apply:

9. A statement is "clear and conspicuous" if it is disclosed in such size, color, contrast, location, duration, and/or audibility that it is readily noticeable, readable, and understandable. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies or is necessary to prevent other information from being misleading or deceptive, then the statement must be presented in proximity to that information, in a manner that is readily noticeable, readable, and understandable, and not obscured in any manner. In addition:

- a. A radio disclosure must be delivered in a volume, cadence and location sufficient for a consumer to hear and comprehend it;
- b. A television disclosure must (i) appear in video in a type size, shade and location, and remain on the screen for a sufficient duration, for a consumer to read and comprehend it, and/or (ii) be delivered in audio in a volume, cadence and location sufficient for a consumer to hear and comprehend it;
- c. A print or Internet disclosure must appear in a type size, contrast and location sufficient for a consumer to read and comprehend it.

10. "Wireless Service" means any basic voice wireless service offered by a commercial mobile radio service provider.

11. "Enhanced Feature" means any communications service associated with Wireless Service, including without limitation paging, voice mail, wireless Internet, text messaging and

personal information services.

12. "Consumer" means an individual or business, as defined by and in accordance with a Participating State's Consumer Statute, residing in a Participating State.

13. "Sales Transaction" means a transaction in which (i) a Consumer who is not a current customer of Carrier purchases and enters in a contract for Wireless Service from Carrier, or (ii) a Consumer who is a current customer of Carrier renews or extends his or her contract for a fixed term, or changes Wireless Service rate plans, without regard to whether the rate plan change results in a new fixed term. For purposes of this Assurance, "fixed term" refers to a Wireless Service contract with a term of greater than one month.

14. "Telephone Sales Representative" means anyone who makes any representations to any Consumer via a telephone conversation regarding Carrier's Wireless Service for the purpose of inducing the Consumer to enter into a Sales Transaction with Carrier, without regard to whether the telephone conversation originally began as a customer service or billing inquiry.

15. "Agent" means one or more persons, a corporation, a partnership, or other entity as the case may be, who enters into or has a relationship with Carrier where it sells Carrier's services on behalf of Carrier, and any sub-contractor, employee, servant, Affiliate or agent of said party.

16. "Affiliate" means a person, association, partnership, corporation or joint-stock company, trust, or other business entity that is controlled by Carrier by virtue of its ownership or voting interest.

#### **B. Disclosure of Material Rates and Terms During a Sales Transaction**

17. Carrier shall during a Sales Transaction or sale of an Enhanced Feature disclose clearly and conspicuously to Consumers all material terms and conditions of the offer to be purchased.

18. Carrier will implement procedures to provide to Consumers during a Sales Transaction clear and conspicuous disclosures of, at a minimum, the following rates and terms of its Wireless Service rate plans and any Enhanced Features to be purchased, if applicable:

- a. rate plan area;
- b. recurring monthly service charges;
- c. number of peak and off-peak minutes;
- d. hours when peak and off-peak minutes apply;
- e. charge for overtime or excess minutes above allowance;
- f. charge for long distance minutes;
- g. charge for off-network or roaming minutes;
- h. minimum contract term;
- i. early termination fee;
- j. activation and/or other mandatory service initiation fees;
- k. material terms of its cancellation and return policy and any applicable charges;
- l. the fact that monthly taxes, surcharges, and other fees apply, including a listing of the name or type and amount (or, if applicable, a percentage formula as of a stated effective date) of any monthly discretionary charges that are generally assessed by Carrier on Consumers in a uniform dollar amount or percentage without regard to locale. For additional monthly discretionary charges that are assessed by Carrier on Consumers with regard to locale, Carrier shall clearly and conspicuously disclose that additional monthly fees will apply, depending on the



customer's locale, and disclose the full possible range of total amounts (or percentage) or the maximum possible total amount (or percentage) of such additional monthly discretionary charges.

m. for a promotional price, the disclosures required by paragraph 34 of this Assurance; and

n. for a free to pay conversion, the disclosures required by paragraph 23 of this Assurance.

19. Where a Sales Transaction occurs at Carrier's retail location, Carrier will implement procedures to provide Consumers with printed materials that Consumers may take and that contain clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

20. Where a Sales Transaction occurs via Carrier's website, Carrier will provide to Consumers clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance, including, but not limited to, a clear and conspicuous disclosure of such information before any click-through or other mechanism of acceptance required for a

Consumer to accept Carrier's contract terms and conditions. These disclosures shall be in electronic format that Consumers may print.

21. During a Sales Transaction that occurs during a telephone conversation between Carrier and a Consumer, and such sales technique is not prohibited under state law, Carrier shall instruct its Telephone Sales Representatives to make the disclosures required by paragraph 18 of this Assurance clearly and conspicuously and orally.

22. Where a Sales Transaction occurs during a telephone conversation between Carrier and a Consumer, Carrier will implement procedures to send within five (5) business days following the telephone conversation with a Consumer who does not have an existing relationship with Carrier and who purchases and enters into a contract for Wireless Service from Carrier, and within ten (10) business days following the telephone conversation with a Consumer who is an existing customer of Carrier and who renews or extends his or her Wireless Service contract for a fixed term, or changes Wireless Service rate plans, resulting in a new fixed term, written materials containing clear and conspicuous disclosures of the information required to be disclosed by paragraph 18 of this Assurance. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by this paragraph of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

23. A “free to pay conversion” means, in an offer or agreement to sell or provide any goods or services, a provision under which a Consumer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if the Consumer does not take affirmative action to cancel before the end of the initial period. If Carrier offers any part of its Wireless Service or any Enhanced Service as a free to pay conversion, Carrier shall disclose, before the Consumer is bound by a contract with Carrier, the material terms and conditions of the free to pay conversion clearly and conspicuously, including, if applicable:

- a. The fact that the Consumer must cancel the free to pay conversion in order to avoid being charged;
- b. The date or deadline and method by which the Consumer must cancel to avoid being charged; and
- c. The cost of the good or service after the expiration of the free to pay conversion.

### **C. Coverage**

24. Carrier shall not misrepresent in its marketing and advertising materials that there is greater geographic service coverage available for its Wireless Service than actually exists.

25. When representing in its advertising and/or marketing materials that its coverage is “nationwide,” “national,” “coast-to-coast,” or when using words of similar import to represent its coverage, Carrier shall disclose clearly and conspicuously the following conditions and limitations on such term:

- a. whether the advertised rate requires the Consumer to be on a particular wireless carrier’s network or networks; and

b. that coverage may not be available in all areas.

26. In addition to the disclosures required by Paragraph 25, for a period of at least three years following the Compliance Date, when representing in its advertising and/or marketing materials that its coverage is "nationwide," "national," "coast-to-coast," or when using words of similar import to represent its coverage, Carrier shall disclose clearly and conspicuously in those advertising and marketing materials the basis for use of the term, which may include the population number covered by the plan, the number of major metropolitan areas covered by the plan, or a referral to the applicable coverage map and to the location where that coverage map is available. Carrier's obligation to clearly and conspicuously disclose the basis of such claim in its advertising and marketing materials shall continue thereafter if there is any material limitation to such coverage representation.

27. When advertising the availability of any Enhanced Feature, if such Enhanced Feature is not available in all areas where Carrier's Wireless Service is available, then Carrier shall disclose that fact clearly and conspicuously.

28. Carrier shall implement procedures to provide during a Sales Transaction at its retail locations, and provide on its website, maps depicting approximate Wireless Service coverage applicable to the Wireless Service rate plan(s) being sold. The maps will be at Carrier's retail locations in printed materials that Consumers may take with them and on Carrier's website as electronic documents that Consumers may print out. The maps will be generated using predictive modeling and mapping techniques commonly used by radio frequency engineers in the wireless service industry to depict approximate outdoor coverage, based on then-appropriate signal strength for the applicable wireless technology and signal strength confidence levels under

normal operating conditions on Carrier's network, factoring in topographical conditions, and subject to variables that impact radio service generally. All such maps will include a clear and conspicuous disclosure of material limitations in Wireless Service coverage depiction and Wireless Service availability. To assist Consumers in making comparisons among carriers, Carrier will make available to Consumers separate such maps depicting approximate Wireless Service coverage on a nationwide and regionwide basis as applicable to its Wireless Service rate plans that are currently offered to Consumers.

29. If at least three years after the Compliance Date, Carrier has developed alternative procedures for providing Consumers with clear and conspicuous disclosures of the information required to be disclosed by paragraph 28 of this Assurance, and the alternative procedures proposed are reasonably designed to be at least as effective in the aggregate in providing clear and conspicuous disclosures of the information required to be disclosed by paragraph 28 of this Assurance, then Carrier may substitute those alternative procedures after providing at least 60 days advance notice to the Attorney General of Tennessee explaining the alternative procedures.

30. Carrier will request to exchange coverage maps based upon the above criteria with its roaming partners, so as to allow the roaming partners to incorporate the same into their own maps as necessary. To the extent Carrier is unable to obtain such maps from a roaming partner, Carrier may rely upon publicly or commercially available coverage information in creating its own maps.

#### **D. Cancellation Period for New Wireless Service**

31. When a Consumer initiates service with Carrier:

- a. The Consumer will be informed of and given a period of not less than 14

days after activation to try out the service. Carrier will not impose any early termination fee if the Consumer cancels service within the 14-day period, and will refund any activation or other non-usage based fee charged to the Consumer if the Consumer cancels service within three days (not including national holidays) after activation, provided in each case that the Consumer complies in full with applicable return and/or exchange policies. If the Consumer will be responsible for any charges or fees for use of the service during the 14-day period, Carrier will clearly and conspicuously disclose this fact during the Sales Transaction. Any charge for airtime and charges based on usage must be based on actual usage (which may, if applicable, be calculated by prorating, either based on portion of month or billing cycle or based on the amount of minutes used in the applicable "bucket" of minutes). If any fees were waived during the Sales Transaction or at any time prior to cancellation, these fees may not be charged when the Consumer cancels during the 14-day period.

b. The Carrier's obligations under paragraph 31(a) shall expire in a Participating State 3 years after the Compliance Date, provided that Carrier has not been adjudged by a court, or where applicable, administrative agency, of competent jurisdiction in the Participating State to be in material violation of this Assurance. If prior to 3 years after the Compliance Date, Carrier is adjudged by a court, or where applicable, administrative agency, of competent jurisdiction in a Participating State to have materially violated this Assurance, Carrier shall continue to be subject to the obligations under paragraph 31(a) in the

Participating State until the later of December 31, 2009 or three years from the date of the last adjudication of a violation unless the operative adjudication is reversed by the highest appellate court that addresses the matter. This paragraph is in addition to all other remedies available to any Participating State in law and equity.

c. If Carrier changes its return policy, it shall provide advance notice with a description of the changes to the Attorney General of Tennessee and it shall clearly and conspicuously disclose its new return policy to Consumers prior to having Consumers enter into a Sales Transaction.

#### **E. Advertising**

32. Carrier shall not misrepresent, expressly or by implication, any term or condition of any of its products or services, including, but not limited to, cost.

33. In advertising materials stating prices for Wireless Service and/or Wireless Service devices, Carrier will disclose clearly and conspicuously all material terms and conditions associated with the stated price, pursuant to applicable law.

34. When advertising a promotional price or free offer for its Wireless Service or Enhanced Features, Carrier will clearly and conspicuously disclose material terms and conditions related to the promotional price, including, as applicable and in close proximity to the promotional price or free offer, any minimum term of service required to obtain that promotional price or free offer and the price after the promotional price or free offer expires within the minimum term.

35. When advertising a "free" Wireless Service device, Carrier will clearly and conspicuously disclose, in close proximity to the word "free," any material limitation on the

word “free,” including, if applicable: (a) the price of any Wireless Service device required to be purchased to obtain the “free” Wireless Service device; and (b) any minimum term of Wireless Service required to obtain the “free” Wireless Service device.

**F. Disclosures of Taxes and Surcharges on Consumer Bills**

36. On Consumers' bills, Carrier will
- a. separate (i) taxes, fees, and other charges that Carrier is required to collect directly from Consumers and remit to federal, state, or local governments, or to third parties authorized by such governments, for the administration of government programs, from (ii) monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges (including, but not limited to, Universal Service Fund fees), except when such taxes, fees, and other charges are bundled in a single rate with the monthly charges for Wireless Service and/or Enhanced Features and all other discretionary charges; and
  - b. not represent, expressly or by implication, that discretionary cost recovery fees are taxes.

**G. Consumer Inquiries and Complaints**

37. Carrier will provide information about how Consumers can contact Carrier in writing, by toll-free telephone number or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to Consumer inquiries and on Carrier's website. Carrier will also make such contact information available, upon request, to any Consumer calling Carrier's customer service department.
38. Carrier shall respond within a reasonable time and in good faith to all consumer



complaints or requests for adjustments received by Carrier with respect to the matters set forth in this Assurance on an individual basis.

#### **H. Compliance Procedures**

39. Carrier shall develop and implement compliance procedures reasonably designed to ensure compliance by Carrier with the obligations contained in this Assurance. With respect to its Agents, Carrier shall (a) notify its Agents of the relevant provisions of this Assurance; (b) ensure that all advertisements provided by Carrier to its Agents for their use in the marketing and sale of Carrier's Wireless Service are in conformity with the terms of this Assurance; and (c) not direct its Agents to take any action or implement any practice that is in contravention of this Assurance.

#### **I. General Provisions**

40. Carrier agrees to pay a total of \$1,666,667.00 to the Attorneys General no later than fifteen (15) days after the effective date of this Assurance for attorneys fees or investigative costs, for consumer education, litigation or local consumer aid funds, or for public protection or consumer protection purposes, as allowed by each Participating State's law at the discretion of each Participating State's Attorney General.<sup>4</sup>

41. All court costs associated with this Assurance and its entry and approval shall be borne

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<sup>4</sup> With respect to Arkansas, the funds shall be deposited in the consumer education and enforcement fund maintained by the Attorney General and shall be held in trust for uses directly related to the Attorney General's consumer protection efforts. With respect to Colorado, such funds, including interest thereon, shall be held by the Colorado Attorney General in trust to be used, first, for actual costs and attorney fees incurred by the Colorado Attorney General in this matter and, second, for consumer education and for consumer fraud and/or antitrust enforcement efforts. In Massachusetts, \$100,000 of the funds shall be used to reimburse the Commonwealth of Massachusetts for fees and costs and the remainder shall be deposited into the Local Consumer Aid Fund pursuant to M.G.L.c. 12, § 11G.

by Carrier and are included within the payment outlined in paragraph 40 of this Assurance. No costs shall be imposed on any Participating State. Further, no discretionary costs shall be imposed on any Participating State.

42. Carrier is entering into this Assurance solely for the purposes of settlement. Nothing contained in this Assurance may be taken as or construed to be an admission by Carrier or as evidence supporting any of the allegations raised by the Attorneys General, any matter of fact or law, any violation of state or federal law, or any other liability or wrongdoing whatsoever, including without limitation an admission by Carrier that any of its business practices are or have been unfair or deceptive, or violate or have violated any of the Consumer Statutes of any of the Participating States, all of which Carrier expressly denies.

43. Further, to the extent that any changes in Carrier's business, advertising materials, and/or advertising practices are made to achieve or facilitate conformance to the terms of this Assurance, such changes shall not constitute any form of evidence or admission by Carrier, explicit or implicit, of wrongdoing or failure to comply with any federal or state statute or regulation or the common law.

44. There is no private right of action, explicit or implicit, created by this Assurance to enforce its terms; however, nothing in this Assurance shall be construed as a waiver of any Consumer's claims.

45. The subject matter of this Assurance is the issues covered by paragraphs 9 through 39 of this Assurance and Carrier's advertising materials and billing practices for its Wireless Service and Enhanced Features related to the issues covered by paragraphs 9 through 39 of this Assurance. The Attorneys General acknowledge that execution of this Assurance constitutes a

complete settlement and release by the Participating States of all civil claims, causes of action, damages, fines, costs, and penalties that were asserted or could have been asserted by the Attorneys General, either individually or collectively, on or prior to the effective date of this Assurance against Carrier, and/or any of its Affiliates, successors, employees, shareholders, officers, directors, Agents (but solely as to said Agents' actions at the direction of Carrier), and/or assigns relating to or based on the subject matter of this Assurance, pursuant to any consumer protection statutes or regulations reasonably construed to address marketing, sales or billing practices that the Attorneys General are authorized to enforce, including without limitation the Consumer Statutes set forth in footnote 3 of this Assurance and the regulations promulgated pursuant to such Consumer Statutes, but not including any statutes or regulations not reasonably construed to address marketing, sales or billing practices (including without limitation consumer credit codes, debt collection, antitrust laws, environmental laws and tax laws).

46. This Assurance shall be governed by the laws of the Participating States and is subject to court approval in those Participating States whose procedures require court approval. By entering into this Assurance, Carrier and the Attorneys General agree to all such court approvals, provided that there are no modifications to the terms of this Assurance without the express written consent of Carrier and the Attorneys General. This Assurance does not constitute an admission by Carrier of any Participating State's jurisdiction over it other than with respect to this Assurance, and does not alter any Participating State's jurisdiction over it.

47. Carrier represents that it has fully read and understood this Assurance, that it understands the legal consequences involved in signing this Assurance, and that there are no other

representations or agreements between Carrier and the Attorneys General not stated in writing herein.

48. Carrier represents and warrants that it is represented by legal counsel, that it is fully advised of its legal rights in this matter and that the person signing below is fully authorized to act on its behalf.

49. This Assurance shall bind Carrier and shall be binding on any and all of its Affiliates, successors, employees, shareholders, officers, directors, and assigns.

50. Carrier shall provide a copy of this Assurance and an accurate summary of the material terms of this Assurance to its senior executive officers who have managerial responsibility for the matters subject to this Assurance.

51. This Assurance shall be effective on July 21, 2004 (the "Effective Date"), but only so long as it has been signed by an authorized representative of Carrier and by authorized representatives of every Participating State, unless such condition expressly has been waived in whole or in part by Carrier. Unless provided otherwise in this Assurance, Carrier shall comply with the terms of this Assurance beginning one hundred twenty (120) days following the Effective Date (but one hundred eighty (180) days with respect to paragraphs 20, 22 and 36), or such later date or dates as Carrier and the Attorneys General otherwise may agree (the "Compliance Date"). In the event Carrier acquires or merges with another wireless carrier that is not subject to the terms of an assurance of voluntary compliance that is substantially similar to this Assurance, the Compliance Date shall be not less than nine months from the date of the closing of such merger or acquisition to bring the acquired operations into compliance with the terms hereof, provided, however, that (a) Carrier shall not unduly delay effecting compliance

with any provisions of this Assurance that can reasonably be completed prior to the end of such period; and (b) if Carrier makes a good faith showing that it is not commercially feasible to complete such compliance within such period, and requests an extension thereto, the Attorneys General shall not unreasonably withhold consent to such an extension of such period, provided that, and so long as, Carrier continues to work diligently toward completion of such efforts.

52. This Assurance contains the entire agreement between Carrier and the Attorneys General. Except as otherwise provided herein, this Assurance shall be modified as to any Participating State and/or Carrier only by a written instrument signed by or on behalf of the Attorney General of that Participating State and signed by or on behalf of Carrier. Carrier understands that in some Participating States court approval of any modification will be necessary. Carrier and the Attorneys General for such Participating States agree to use their best efforts to obtain such court approval.

53. Neither Carrier nor anyone acting on its behalf shall state or imply or cause to be stated or implied that a Participating State, an Attorney General, or any governmental unit of a Participating State has approved, sanctioned, or authorized any practice, act, advertising material, or conduct of Carrier.

54. Nothing in this Assurance shall be construed as a waiver of or limitation on Carrier's right to defend itself from or to make agreements in any private individual or class action, state, or federal claim, suit or proceeding relating to the existence, subject matter or terms of this Assurance.

55. Nothing contained in this Assurance shall be construed to deprive any Consumer or other person or entity of any private right under the law.

56. The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by Carrier or the Attorneys General to lend meaning to the actual terms of this Assurance.
57. This Assurance shall not be construed against the “drafter” because both Carrier and the Attorneys General participated in the drafting of this Assurance.
58. Nothing in this Assurance shall limit an Attorney General's right to obtain information, documents, or testimony from Carrier pursuant to any state or federal law or regulation.
59. If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance, and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or provision had not been contained herein.
60. Carrier will not participate directly or indirectly in the formation of a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or that would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.
61. Nothing in this Assurance shall be construed to waive any claims of sovereign immunity that a Participating State may have in any action or proceeding.
62. Nothing in this Assurance shall be construed as relieving Carrier of its obligation to comply with all state and federal laws and regulations, nor shall any of the terms of this Assurance be deemed to grant Carrier permission to engage in any acts or practices prohibited by such laws and regulations.
63. As consideration for the relief agreed to herein, if the Attorney General of a Participating

State determines that Carrier has failed to comply with any of the terms of this Assurance, and if in the Attorney General's sole discretion the failure to comply does not threaten the health or safety of the citizens of the Participating State, the Attorney General will notify Carrier in writing of such failure to comply and Carrier shall then have ten (10) business days from receipt of such written notice to provide a good faith written response to the Attorney General's determination. The response shall include an affidavit containing, at a minimum, either:

- a. A statement explaining why Carrier believes it is in full compliance with the Assurance; or
- b. A detailed explanation of how the alleged violation(s) occurred; and
  - i. A statement that the alleged breach has been cured and how; or
  - ii. A statement that the alleged breach cannot be reasonably cured within ten (10) days from receipt of the notice, but (1) Carrier has begun to take corrective action to cure the alleged breach; (2) Carrier is pursuing such corrective action with reasonable and due diligence; and (3) Carrier has provided the Attorney General with a detailed and reasonable time table for curing the alleged breach.

64. Nothing herein shall prevent the Attorney General from agreeing in writing to provide Carrier with additional time beyond the ten (10) business day period to respond to the notice.

65. Nothing herein shall be construed to exonerate any contempt or failure to comply with any provision of this Assurance after the date of its entry, to compromise the authority of the Attorney General to initiate a proceeding for any contempt or other sanctions for failure to comply, or to compromise the authority of the court to punish as contempt any violation of this Assurance. Further, nothing in this subsection shall be construed to limit the authority of the

Attorney General to protect the interests of the Participating State or the people of the Participating State.

66. The Participating States represent that they will seek enforcement of the provisions of this Assurance with due regard for fairness.

67. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by the Federal government or any Federal agency, such as the FCC, and a court of competent jurisdiction holds that such statute or regulation is in conflict with any provision of this Assurance, Carrier may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance. Carrier shall provide advance written notice to the Attorney General of Tennessee of the inconsistent provision of the statute or regulation with which Carrier intends to comply under this paragraph 67, and of the counterpart provision of this Assurance which is in conflict with the statute or regulation.

68. In the event that any statute or regulation pertaining to the subject matter of this Assurance is modified, enacted, promulgated or interpreted by a Participating State such that the statute or regulation is in conflict with any provision of this Assurance and such that Carrier cannot comply with both the statute or regulation and the provision of this Assurance, Carrier may comply with such statute or regulation, and such action shall constitute compliance with the counterpart provision of this Assurance. Carrier shall provide advance written notice to both the Attorney General of Tennessee and the Attorney General of the Participating State, of the inconsistent provision of the statute or regulation with which Carrier intends to comply under this paragraph 68, and of the counterpart provision of this Assurance which is in conflict with the



statute or regulation.

**J. Modification of Certain Operational Provisions**

69. To seek a modification of this Assurance for any reason other than that provided for in paragraphs 67 or 68 of this Assurance, Carrier shall send a written request for modification to the Attorney General of Tennessee on behalf of the Participating States. The Participating States shall give such petition reasonable consideration and shall respond to Carrier within 30 days of receiving such request. At the conclusion of this 30 day period, Carrier reserves all rights to pursue any legal or equitable remedies that may be available to it.

In the Matter of Cellco Partnership, d/b/a Verizon Wireless  
ASSURANCE OF VOLUNTARY COMPLIANCE

CELLCO PARTNERSHIP, D/B/A VERIZON WIRELESS

By: \_\_\_\_\_

(Name)

(Title)

Date:

In the Matter of Cellco Partnership, d/b/a Verizon Wireless  
ASSURANCE OF VOLUNTARY COMPLIANCE

Dated: June 25, 2004

THOMAS F. REILLY  
Attorney General  
Commonwealth of Massachusetts

By:

\_\_\_\_\_  
Karlen J. Reed, BBO #635094  
Assistant Attorney General  
Utilities Division  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200

By:

\_\_\_\_\_  
Geoffrey G. Why, BBO #641267  
Assistant Attorney General  
Consumer Protection and Antitrust Division  
One Ashburton Place  
Boston, MA 02108  
(617) 727-2200

STATE OF MINNESOTA

FILED PSL

DISTRICT COURT

COUNTY OF HENNEPIN

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FOURTH JUDICIAL DISTRICT

BY                      DEPUTY  
HENN CO. DISTRICT  
COURT ADMINISTRATOR

Case Type: Other Civil  
(Consumer Protection)

State of Minnesota, by its Attorney General,  
Lori Swanson,

Court File No.                     

Plaintiff,

vs.

**COMPLAINT**

Sprint Nextel Corporation, d/b/a Sprint  
Nextel, Nextel or Sprint and f/k/a Sprint  
Corporation; Sprint Spectrum, L.P. a/k/a  
Sprint PCS; Northern PCS Services, LLC;  
Sprint Solutions, Inc.; Sprint/United  
Management Company; Nextel Retail  
Stores, LLC; Nextel Operations Inc.; Nextel  
Partners Operating Corp.; Nextel West  
Corp.; and Nextel West Services, LLC,

Defendants.

The State of Minnesota, by its Attorney General, Lori Swanson, alleges as follows:

**INTRODUCTION**

1. Sprint Nextel Corporation (d/b/a Sprint Nextel, Nextel or Sprint and f/k/a Sprint Corporation), Sprint Spectrum L.P. (a/k/a Sprint PCS), Northern PCS Services, LLC, Sprint Solutions, Inc., Sprint/United Management Company, Nextel Retail Stores, LLC, Nextel Operations Inc., Nextel Partners Operating Corp., Nextel West Corp., and Nextel West Services, LLC (together, "Defendants") have violated Minnesota's consumer protection laws by misleading and defrauding subscribers (hereafter "consumers") through the extension of wireless

**EXHIBIT**

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consumers' contracts without adequate notice or meaningful consent. Defendants have mislead and deceived Minnesota consumers by extending consumers' contracts for up to two years without providing adequate notice or obtaining meaningful consent to a contract extension when consumers made small changes to their phone service, such as adding extra minutes or purchasing a new phone, when they responded to solicitations by Defendants for additional products and services, and when the consumers received courtesy discounts. Some consumers first learned that their contracts were extended only after the fact, when the consumers changed to a different wireless service or cancelled their service and were hit with substantial termination fees. The extension of wireless contracts without providing adequate notice and without obtaining meaningful consent from the consumer is misleading, deceptive, and fraudulent conduct in the marketing and sale of wireless telephone services and equipment and violates Minnesota law.

### **JURISDICTION AND VENUE**

2. This Court has personal jurisdiction over the defendants, and, pursuant to Minn. Stat. §§ 8.01, 8.31, 8.32, subd. 2 (a), 325F.69, 325F.70 (2006) and common law, jurisdiction over the subject matter of this action.

3. Venue in Hennepin County is proper under Minn. Stat. § 542.09 (2006) because the cause of action arose, in part, in Hennepin County.

## PARTIES

4. Lori Swanson, the Attorney General of the State of Minnesota, is authorized under Minn. Stat. Chapter 8, including Minn. Stat. §§ 8.01, 8.31, 8.32 and under Minn. Stat. §§ 325F.67 and 325F.70 (2006) and has common law authority, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its citizens, to enforce Minnesota's consumer protection laws.

5. Sprint Nextel Corporation, d/b/a Sprint PCS, Nextel or Sprint (collectively "Sprint Nextel"), is a Kansas corporation with its executive offices at 2001 Edmund Halley Drive, Reston, Virginia 20191, and its operational headquarters located at 6200 Sprint Parkway, Overland Park, Kansas 66251. In August of 2005, Sprint Corporation merged with Nextel Communications, Inc. to create Sprint Nextel Corporation. According to Sprint Nextel's 10-K filing with the Securities Exchange Commission, "Sprint Nextel is mainly a holding company, with its operations primarily conducted by its subsidiaries." Sprint Nextel either directly or through its predecessors, successors, subsidiaries and/or affiliates, marketed and/or sold wireless telephone services and/or equipment to Minnesota consumers.

6. Sprint Spectrum, L.P., a subsidiary of Sprint Nextel, is a Delaware limited partnership with its principal executive offices located at 4900 Main Street, Kansas City, Missouri 64112. Upon information and belief, Sprint Nextel has dominated and controlled the finances, policies and business practices of Sprint Spectrum, L.P. Sprint Spectrum, L.P., is registered with the Minnesota Secretary of State, and, upon information and belief, either directly or through its predecessors, successors, and/or affiliates, marketed and/or sold wireless telephone services and/or equipment to Minnesota consumers.

7. Northern PCS Services, LLC ("Northern PCS"), was acquired by Sprint Nextel on August 1, 2007, and it is now a subsidiary of Sprint Nextel. Northern PCS is based at 132 Division Street, Waite Park, Minnesota 56387. Upon information and belief, Sprint Nextel has dominated and controlled the finances, policies and business practices of Northern PCS. According to Sprint Nextel's website, Northern PCS provides Sprint PCS services to small and mid-size markets in Minnesota.<sup>1</sup> Northern PCS is registered with the Minnesota Secretary of State, and, upon information and belief, either directly or through its predecessors, successors, and/or affiliates, marketed and/or sold wireless telephone services and/or equipment to Minnesota consumers.

8. Sprint Solutions, Inc., a subsidiary of Sprint Nextel, is a Delaware corporation and is headquartered at 2001 Edmund Halley Drive, Reston, Virginia 20191. Upon information and belief, Sprint Nextel has dominated and controlled the finances, policies and business practices of Sprint Solutions Inc. Sprint Solutions, Inc., is an entity in which consumers contract for wireless telephone services and/or equipment. The "Terms and Conditions," which can be found on Sprint's website at [www.sprint.com](http://www.sprint.com), state, "[Y]our Agreement with Sprint Solutions, Inc. and its affiliates doing business as Sprint, Sprint PCS or Nextel includes terms of your service plan (including those outlined below) and the most recent Sprint Nextel Terms and Conditions of Service ("Ts and Cs")." Sprint Solutions, Inc., is registered with the Minnesota Secretary of state, and upon information and belief, either directly or through its predecessors, successors, and/or affiliates, marketed and/or sold wireless telephone services and/or equipment to Minnesota consumers.

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<sup>1</sup> [http://www2.sprint.com/mr/news\\_dtl.do?id=17020](http://www2.sprint.com/mr/news_dtl.do?id=17020)

9. Sprint/United Management Company ("Sprint/United"), a wholly owned subsidiary of Sprint Nextel, is a Delaware corporation. Sprint/United's principal executive offices are located at 501 Lou Holland Drive, Kansas City, Missouri 64116. Upon information and belief, Sprint Nextel has dominated and controlled the finances, policies and business practices of Sprint/United. Sprint/United is registered with the Minnesota Secretary of State, and, upon information and belief, either directly or through its predecessors, successors, and/or affiliates, marketed and/or sold wireless telephone services and/or equipment to Minnesota consumers.

10. Nextel Retail Stores, LLC ("Nextel Retail"), a subsidiary of Sprint Nextel, is a Delaware corporation and is headquartered at 2001 Edmund Halley Drive, Reston, Virginia 20191. Upon information and belief, Sprint Nextel has dominated and controlled the finances, policies and business practices of Nextel Retail. Nextel Retail provides retail services to consumers, and is registered with the Minnesota Secretary of State. Nextel Retail upon information and belief, either directly or through its predecessors, successors, and/or affiliates, marketed and/or sold wireless telephone services and/or equipment to Minnesota consumers.

11. Nextel Operations Inc., a wholly owned subsidiary of Sprint Nextel, is a Delaware Corporation. Nextel Operations Inc., is believed to be headquartered at 2001 Edmund Halley Drive, Reston, Virginia 20191. Upon information and belief, Sprint Nextel has dominated and controlled the finances, policies and business practices of Nextel Operations Inc. Nextel Operations Inc., is registered with the Minnesota Secretary of State. and upon information and belief, either directly or through its predecessors, successors, and/or affiliates, marketed and/or sold wireless telephone services and/or equipment to Minnesota consumers.



12. Nextel Partners Operating Corp. ("Nextel Partners"), a wholly owned subsidiary of Sprint Nextel, is a Delaware corporation with its business headquarters located at 4500 Carillon Point, Kirkland, Washington 98033. Upon information and belief, Sprint Nextel has dominated and controlled the finances, policies and business practices of Nextel Partners. Nextel Partners provides integrated wireless digital communications services to midsize and rural markets. Nextel Partners is registered with the Minnesota Secretary of State, and, upon information and belief, either directly or through its predecessors, successors, and/or affiliates, marketed and/or sold wireless telephone services and/or equipment to Minnesota consumers.

13. Nextel West Corp., a wholly owned subsidiary of Sprint Nextel, is a Delaware corporation. It is headquartered at 2001 Edmund Halley Drive, Reston, Virginia 20191. Upon information and belief, Sprint Nextel has dominated and controlled the finances, policies and business practices of Nextel West Corp. Nextel West Corp. provides wireless services to consumers, and is registered with the Minnesota Secretary of State. Nextel West Corp., upon information and belief, either directly or through its predecessors, successors, and/or affiliates, marketed and/or sold wireless telephone services and/or equipment to Minnesota consumers.

14. Nextel West Services, LLC, a wholly owned subsidiary of Sprint Nextel is a Delaware corporation. It is headquartered at 2001 Edmund Halley Drive, Reston, Virginia 20191. Upon information and belief, Sprint Nextel has dominated and controlled the finances, policies and business practices of Nextel West Services, LLC. Nextel West Services, LLC, provides wireless services to consumers, and is registered with the Minnesota Secretary of State. Nextel West Services, LLC, upon information and belief, either directly or through its predecessors, successors, and/or affiliates, marketed and/or sold wireless telephone services and/or equipment to Minnesota consumers.

## FACTUAL BACKGROUND

15. Sprint Nextel is a corporation comprising a number of subsidiaries and affiliates through which it operates in Minnesota, including, but not limited to, Sprint Spectrum L.P. (a/k/a Sprint PCS), Northern PCS Services, LLC, Sprint Solutions, Inc., Sprint/United Management Company, Nextel Retail Stores, LLC, Nextel Operations Inc., Nextel Partners Operating Corp., Nextel West Corp., and Nextel West Services, LLC.

16. Sprint Nextel boasts that it is the third largest wireless company in the United States, providing wireless telephone service to over 50 million Americans.

17. Defendants provide wireless telephone service to consumers pursuant to contracts which generally last one to two years. If a consumer cancels before the termination date, Defendants typically charge the consumer a termination fee of up to \$200. After the initial term of the contract ends, consumers may continue to receive Sprint wireless service under a month-to-month contract arrangement.

18. Defendants provide wireless service under a variety of wireless plans with dozens of different characteristics. For instance, each wireless plan may have a different number of wireless service minutes allotted to the consumer, different allocations of the consumer's minutes based on the time of day the consumer makes calls, e.g. "anytime" minutes as opposed to "nights and weekends" minutes, a different number of phones covered under one plan, and a difference in charges for roaming (i.e. calls made outside Sprint's service network), text messages and for minutes used in excess of the number permitted under the consumer's plan. While each particular configuration commands its particular fee, the contract terms are limited to a one or two year option.

19. When some consumers have contacted Defendants to make small changes to their existing plans, such as to add additional minutes, a phone, or phone features, Defendants have imposed a one to two year contract extension or even a new contract upon the consumers without adequately informing those consumers that the changes result in the extension of an existing contract or the acceptance of a new contract or obtaining meaningful consent to the contract extension or new contract. In some cases, Defendants' customer service representatives have told consumers that these minor changes to their accounts *would not* result in a contract extension, but then have extended the consumers' contracts despite this representation. Other consumers report that Defendants have mislead them by making unauthorized changes to their service plan. Sometimes, these unauthorized changes are not discovered by the consumer until they cancel their wireless service in accordance with their contract, and then are hit with large termination fees.

20. Defendants have also extended consumers' contracts by actively marketing to existing consumers new products and services without adequately informing the consumer that the acceptance of the offer would result in a contract extension. Unbeknownst to some consumers, acceptance of a new product or service, such as an upgraded phone or additional minutes, has resulted in an extension of their existing contract term or even a whole new contract.

21. Defendants have also offered consumers what is described by Defendants as a "courtesy discount" without adequately notifying the consumers that by receiving the discount, their contract was extended or a new contract was created.

22. When some consumers have asked Defendants for a copy of their alleged new contracts or evidence there was a contract extension, Defendants have stated that they do not

have a copy of the contract to which they insist the consumer is bound, and have refused to provide the consumer with a copy of a contract outlining the terms.

**Defendants Have Extended Minnesota Consumers' Contracts Without  
Providing Adequate Notice or Receiving Meaningful Consent**

23. According to the American Customer Satisfaction Index, the cell phone industry continually ranks among the bottom five industries for customer satisfaction.<sup>2</sup> The Defendants' unauthorized unilateral extension of consumers' contracts and creation of new contracts without providing adequate notice and/or obtaining meaningful consent is an abusive practice that results in a denial of a consumer's right to shop around for the lowest rates and best quality service. Below are illustrative, non-exclusive examples of Defendants' tactics in attempting to hold consumers captive by fraudulently extending their contracts and then penalizing consumers when they try to leave:

24. Lawrence Biehn ("Biehn"), a former high school principal who resides in Circle Pines, Minnesota, began a one year contract around 2001 or 2002 with Defendants for wireless phone service. Biehn rarely used his phone, so after having wireless service with Defendants for nearly four years, he decided to terminate his contract in November of 2006. On his final statement, Biehn, a long term customer of Defendants, noticed that he was charged an early termination fee. When he called Defendants to dispute the charge, he was told that he changed his service and thereby extended his contract the previous year. Biehn, however, does not recall making any changes to his plan nor did he have any reason to change his plan. Biehn

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<sup>2</sup> Eleazar David Melendez, *I'm About to Lose You*, Newsweek, August 6, 2007, at 36.

was also told during his telephone call with Defendants that Defendants sometimes falsify customer accounts to reflect contract extensions in order to meet quotas or earn commissions. Ultimately, Defendants refused to remove the early termination fee until Biehn asked the Minnesota Attorney General's Office ("AGO") for help.

25. Elizabeth Adamek ("Adamek"), of Randall, Minnesota, who is studying for her masters degree in agriculture, cancelled her wireless service with Defendants in November of 2006 after her two year contract term had expired. Adamek thereafter received a letter in the mail from Defendants thanking her for extending her contract for two years. When Adamek called Defendants' customer service, she was told that she would have to pay \$200 in early termination fees if she cancelled her service. Defendants claimed that her contract had been extended on November 17, 2006, when Adamek allegedly called Defendants, but Defendants were unable to provide Adamek with any record of her call on November 17, 2006. Over the next month and half, Adamek spent substantial time trying to correct Defendants' error. During telephone calls, she was continually placed on hold, transferred, and disconnected. Adamek describes her experience with Defendants as a "nightmare."

26. Peggy Dahl ("Dahl"), a bank teller from Buffalo, Minnesota, also battled with Defendants over an extended contract after an unauthorized 5% discount appeared on her bill. Dahl, who had wireless service with Defendants more than five years and thus had fulfilled her contract term, assumed she was on a month to month contract and could cancel at any time. Dahl cancelled her wireless service with Defendants, and was surprised when Defendants then charged her a \$150 termination fee. Dahl contacted Defendants to dispute the termination fee, and was told for the first time that Defendants had been applying a 5% discount to the account for several months. Defendants claimed this discount began after Dahl's daughter contacted

Defendants about the phone *malfunctioning*. Dahl's daughter, however, states that she was not informed of the discount and did not agree, and not being the authorized account holder, could not agree to any change of the wireless bill.

27. Katie Rogness ("Rogness"), a communications Ph.D. candidate from Minneapolis, Minnesota, contacted Defendants in the Fall of 2006 to confirm that her contract ended on April 12, 2007. After affirming, Rogness cancelled her service with Defendants on April 28, 2007. Ms. Rogness' final bill from Defendants contained \$400 in early termination fees. Again, Defendants claimed that Rogness extended her contract on November 12, 2006, by agreeing to a 5% discount on her bill. Rogness knew nothing about this discount. Defendants stated that they mailed a letter confirming that her acceptance of this discount extended her contract for two years, but Rogness does not recall receiving this letter. After being transferred numerous times and holding for hours, Defendants told her this was her problem and refused to waive the termination fee. Rogness is "outraged that [Defendants] can extend a contractual agreement without the consent of the consumer."

28. Even when consumers are aware that a discount will be applied to their bill, Defendants have not adequately disclosed that the consumer's contract will be extended. For example, when Marlene Bratvold ("Bratvold"), a senior citizen splitting her time between Plymouth, Minnesota and Arizona, contacted Defendants to change her billing information, Defendants told her that because she was a good customer and used few minutes, they would give her a courtesy discount for two years. She naturally did not interpret this apparent goodwill gesture as a ploy to extend her contract. When Bratvold terminated Defendants' service in conformance with her contract, she received a final bill from Defendants with \$150 in early termination fees. Bratvold immediately called Defendants to dispute the charge. In this phone

call, Bratvold was told for the *first* time that her acceptance of the *courtesy* discount resulted in a two-year contract extension. When Bratvold contacted the AGO for help, she noted that disguising contract extensions as courtesy discounts is a “sneaky” practice, and questioned “how many other people have [Defendants] robbed?”

29. Following even the smallest voluntary additions to a wireless phone plan, such as adding or decreasing minutes, Defendants have extended consumers’ contracts unilaterally and without authorization. Denise Engebretson (“Engebretson”), of Rockford, Minnesota became unexpectedly trapped in an additional *two year* contract when she decreased the minutes on her service plan. When Engebretson called on April 17, 2006, to decrease her minutes, Defendants’ customer service representative told her that this could be done, but she would have to extend her contract for one year. Although she was not happy about extending her contract for one year, she agreed. On May 9, 2007, more than a year later and after her contract expired, Engebretson moved her cell phone service to another carrier. Defendants slapped Engebretson with a \$150 early termination fee. Because she agreed to an extension for only one year, Engebretson called to dispute the early termination fee. Engebretson was transferred to several sales representatives and put on hold for over thirty minutes, only to be told that Defendants would call her back. Defendant, however, never called her back.

30. David Johnson (“Johnson”), a resident of Arden Hills is a regional manager of a local company. Johnson is one of the lucky consumers who narrowly avoided an unauthorized contract extension while adding minutes. Johnson decided in the Spring of 2007 that he needed to add minutes to his cell phone plan because he was traveling often for work. Just as he was about to close the transaction, Johnson asked the sales associate if doing so would extend his contract. Only when he specifically asked the right question, was Johnson informed that adding

minutes would extend his contract. In May of 2007, Johnson wrote the AGO questioning the legality of this practice.

31. Selena Hayslett ("Hayslett"), a realtor from Apple Valley, Minnesota, had her contract extended several times without her knowledge or consent for simply correcting billing errors. Hayslett and her husband upgraded their phones in November of 2006. After upgrading, Hayslett noticed that she was overcharged on her next bill by about \$300. When Hayslett called to dispute the charges, she was informed that parts of her service plan no longer existed, and she had to switch service plans. Thereafter, each time she called to correct a billing error, she was placed on hold for extended periods of time and often had to call several times to simply correct one billing error. During one of the calls, Hayslett was told by a representative that her contract had been renewed the last time she called. Hayslett then realized that each time she had called Defendants to correct the billing errors, Defendants had been extending her contract without her consent or knowledge. Hayslett believes Defendants had "tricked" her into extending her contract.

32. Jon Hintz ("Hintz") of Stewartville, Minnesota, was also misled and deceived by Defendants. Hintz agreed to only a one year extension to his contract, but then Defendants unilaterally extended it for two years. When Hintz contacted Defendants in June of 2006, to inquire about getting a new phone, Defendants informed him that he was eligible for a \$50 rebate per line if he extended his contract by one year. Hintz, not wanting to extend his contract for more than a year, verified with the representative that his contract would only be extended for one year. In May of 2007, Hintz called to dispute charges on his bill and to confirm that his contract expired in June of 2007. During this call, he was informed for the first time that, according to Defendants, his contract expired in 2008. Upset that Defendants misled him, he



asked to speak with a supervisor. The supervisor, rude and unhelpful, hung up on him. Hintz called back, and once again spoke with rude and unhelpful representatives. Hintz stated that one of Defendants' representatives told him "you are going to be a Sprint customer for another year and there is nothing you can do about it [unless] you . . . pay the \$200 early termination fees."

33. Kirsten Farrell ("Farrell") of Minneapolis, Minnesota, is another unsuspecting consumer who was misled and deceived by Defendants when they sold her an upgrade. After upgrading to a new phone, Farrell was unable to get good service or receive voicemail messages, so she called Defendants for help. She was told by a customer service representative that for a \$25 upgrade fee and *no* extension or renewal of her contract, they would swap out her phone for a different model. Farrell agreed to do this, but about two weeks later, she received a notice in the mail from Defendants indicating that her contract had been extended for two years. Farrell called to dispute the unauthorized contract extension, and was informed by a customer service representative that the phone that replaced her defective phone was an upgrade and that Defendants' representative was required to impose an extension. Repudiating the previous customer service representative's agreement, the representative told her that she could either swap back to her old phone, or pay Defendants \$150 for her current phone.

34. Kelly Effinger ("Effinger") a sign language interpreter from Brooklyn Park, Minnesota, had a similar experience. Around December of 2004, Effinger added an additional phone to her plan and was promised by Defendants that the phone would not be under contract. When Effinger called Defendants in October of 2006 to confirm that the phones were no longer under contract, she was assured by Defendants that the third phone was never placed under a contract. Consequently, Effinger ported out her three phones to another carrier. Before she activated her phones with the new carrier, she called to confirm that there would be no problems

with Defendants. During the call, Effinger was bounced around to about nine different representatives, who repudiated the earlier agreements, and informed her that her third phone was under contract. Defendants also told Effinger that if she cancelled her third phone, she would be charged a \$175 early termination fee. During her final conversation with Defendants' customer service, Effinger requested to speak to someone who could help her, and Defendants' customer service representative replied, "I am that person and I'm not going to do what you want." Defendants' customer service representative ended the conversation by hanging up on Effinger. By the time the call ended, Effinger claimed she had wasted one hour and forty-five minutes trying to get Defendants to keep their word.

35. Defendants also failed to adequately disclose that contracts would be extended when consumers purchased new equipment or phones. For example, having wireless service with Defendants for three years, Anne Danielson ("Danielson"), a clerical worker for the State of Minnesota who resides in White Bear Lake, Minnesota, purchased a new phone, but returned it because of poor service. She was not informed that purchasing a new phone would extend her contract. About a year and a half later, Danielson terminated her service with Defendants, and they billed her \$150 for early termination fees. Danielson disputed Defendants' fee, and was told for the first time that when she purchased a phone in 2003, her contract was extended. Defendants declared that this was her problem and there was nothing they could do.

36. Semple Enterprises is a family-owned business in St. Paul, Minnesota, that recycles asphalt and concrete to make road and building materials, excavates roads and buildings, and provides demolition services. Semple Enterprises' contracts were extended when employees simply visited retail stores to purchase equipment for the phones, such as batteries and chargers, sought repairs, or upgraded phones. Semple Enterprises states that none of the employees knew

about or agreed to contract extensions or had the authority to do so. Denise Semple, one of Semple Enterprises owners stated, "I believe that Sprint Nextel has been dishonest in the conduct of its business with my company." Because of these contract extensions, Semple Enterprises is unable to switch wireless carriers without facing thousands of dollars in termination charges.

37. Jennifer Pulczinski ("Pulczinski") of Bloomington, Minnesota, also was deceived by Defendants' failure to disclose that her contract would be extended when she purchased a new cell phone when her old one failed. Because she only had three months left on her contract, she decided to pay full price (about \$300). Approximately nine months later, Pulczinski decided to switch cell phone providers. Defendants charged her a \$150 early termination fee. She was later informed for the first time that when she had purchased a new phone, Defendants' had unilaterally modified her contract by increasing her minutes without her consent. Pulczinski never agreed to any service plan upgrade, however. Defendants claim that when Pulczinski purchased the phone and upgraded her service that she was "educated" about her contract being extended for two years, but Pulczinski does not recall being so "educated." Pulczinski requested that Defendants produce a contract signed by her showing that she agreed to a contract extension and produce a recording of her supposed "education" pertaining to the contract extension. While Defendants claim that Pulczinski should have received a confirmation letter in the mail, Pulczinski does not recall receiving one. Despite Defendants providing no evidence that Pulczinski agreed to a modification of her contract, they refused to remove the \$150 early termination fee.

38. Deborah Cox ("Cox") of Bloomington, Minnesota, similarly was misled when she upgraded her cellular phone. At the time she upgraded in 2003, she was told she was extending her contract for one year and after that she would be on a month to month contract. In May of

2005, Cox switched to a different carrier. Because she thought she was on a month-to-month contract, Cox did not think it would be a problem that she switched carriers. However, Defendants assessed Cox an early termination fee of \$150 after the switch. Cox contacted Defendants several times to dispute the early termination fee and two year contract extension. Defendants refused to remove the early termination fee and told Cox that she was responsible for the fee. In response to her experience with Defendants, Cox stated, "Sprint's conduct upset me greatly, and I believe that Sprint was lying. Furthermore, it seemed that the people handling my concerns just did not care."

39. As if wrongfully and systematically imposing punitive termination fees were not bad enough, Defendants also sent disputed accounts to collection agencies, hurting consumers credit. For example, when Scott Strouts ("Strouts"), an attorney in Minneapolis, cancelled his account in May of 2005, he was charged \$150 in early termination fees. When he called to dispute this charge, he was surprised to learn that when he purchased a new phone at *full price* in October of 2003, Defendants recorded a contract extension for two years. Strouts, livid at the fact that Defendants were attempting to bilk him, requested written confirmation showing he agreed to a new contract, but Defendants did not provide any. Defendants' refusal to remove the fee, not only resulted in Strouts' account being sent to a collection agency, but also caused Strouts to incur a negative reference on his credit report.

COUNT I

**DEFENDANTS' EXTENSION OF ITS CONSUMERS' CONTRACT TERMS OR  
IMPOSITION OF NEW CONTRACTS WITHOUT ADEQUATE NOTICE OR  
MEANINGFUL CONSENT VIOLATES MINNESOTA'S CONSUMER FRAUD ACT.**

40. Plaintiff re-alleges all prior paragraphs of this Complaint.

41. Minn. Stat. § 325F.69, subd. 1 provides that:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided herein.

42. Defendants have made material misstatements and material omissions in the sale and marketing of their wireless products and services by failing to adequately notify consumers that changes made to their wireless plans, the acceptance of new products and services marketed to them by Defendants, and/or the receipt of what is described by Defendants as courtesy discounts result in the extension of an existing contract or the imposition of a new contract. This deceptive practice often wrongfully imposes a penalty fee on consumers.

43. Defendants also have engaged in fraudulent conduct by holding consumers to unauthorized extended or new contracts.

44. Defendants' practices in connection with the marketing and sale of its wireless products and services are false, deceptive and misleading.

45. Defendants' conduct described above constitutes multiple, separate violations of Minn. Stat. § 325F.69, subd. 1 (2006).

## COUNT II

### **DEFENDANTS' EXTENSION OF ITS CONSUMERS' CONTRACT TERMS OR IMPOSITION OF NEW CONTRACTS WITHOUT ADEQUATE NOTICE OR MEANINGFUL CONSENT OF ITS CONSUMERS VIOLATES MINNESOTA'S UNIFORM DECEPTIVE TRADE PRACTICES ACT.**

46. Plaintiff re-alleges all prior paragraphs of this Complaint.

47. Minn. Stat. § 325D.44, subd. 1 provides, in relevant part, that:

Subdivision 1. A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:

(13) engages in any other conduct which similarly creates a likelihood of confusion or misunderstanding.

48. Defendants have engaged in conduct that creates a likelihood of confusion or misunderstanding. Defendants have unilaterally extended its consumers contracts or placed consumers in new contracts without adequate notice or meaningful consent. Consumers have learned of the unauthorized changes only after they cancelled their service and were hit with exorbitant and unexpected termination fees.

49. When consumers dispute the existence of the extended or new contracts, Defendants have refused to correct its records and remove the charges for termination fees. In some cases, Defendants have even sent consumers' accounts to collection agencies, thereby damaging the consumers' credit ratings.

50. Defendants' conduct is a deceptive practice and constitutes multiple and separate violations of Minn. Stat. § 325D.44, subd. 1 (2006).

### **RELIEF**

WHEREFORE, Plaintiff, the State of Minnesota, by its Attorney General Lori Swanson, prays that the Court issue its order and judgment as follows:

- A. Declaring that Defendants' acts described in this Complaint constitute multiple, separate violations of Minn. Stat. §§ 325F.69 and 325D.44, subd. 1.
- B. Enjoining Defendants, and its employees, officers, directors, agents, successors, assignees, affiliates, merged or acquired predecessors, parent or controlling entities, subsidiaries, and all other persons acting in concert of participation with it, from the conduct described herein, or violating in any other way Minn. Stat. §§ 325F.69 and 325D.44, subd. 1.
- C. Awarding judgment against Defendants for civil penalties pursuant to Minn. Stat. § 8.31, subd. 3 for each separate violation of Minn. Stat. §§ 325F.69 and 325D.44, subd. 1.
- D. Awarding judgment against Defendants for restitution under the *parens patriae* doctrine, Minn. Stat. § 8.31, the general equitable powers of this Court, and any other authority for all persons and entities injured by Defendants' acts described in this Complaint.
- E. Awarding plaintiff its costs, including costs of investigation and attorney's fees, as authorized by Minn. Stat. § 8.31, subd. 3a.
- F. Granting such further and other relief as the Court deems just and proper.

Dated: 9/27/07

Respectfully submitted,

LORI SWANSON  
Attorney General  
State of Minnesota

  
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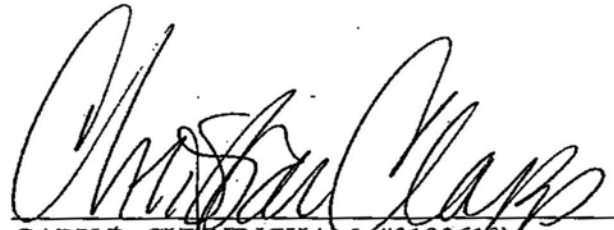
ATTORNEYS FOR STATE OF MINNESOTA

MINN. STAT. § 549.211

ACKNOWLEDGMENT

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.21 (2006).

Dated: 9/27/07



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10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO  
12

13 THE PEOPLE OF THE STATE OF CALIFORNIA,  
14 Plaintiff,  
15 v.  
16 AT&T MOBILITY LLC,  
17 Defendant.  
18

Case No.

FINAL JUDGMENT AND  
PERMANENT INJUNCTION

19  
20 Plaintiff, the People of the State of California through Edmund G. Brown Jr., Attorney  
21 General and Deputy Attorney General John G. Donhoff, Jr., and Defendant AT&T Mobility  
22 LLC, a Delaware corporation, appearing through counsel, having stipulated to the entry of this  
23 Judgment without the taking of proof or trial; this Judgment not constituting evidence of or an  
24 admission regarding any issue alleged in the Complaint; the Court having considered the  
25 Stipulation for Entry of Judgment executed by the parties and filed herewith; and good cause  
26 appearing,

27 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

28 JURISDICTION AND VENUE

EXHIBIT

E

1. This Court has jurisdiction of the subject matter of this action and of the parties. Venue as to all matters between the parties relating to this action is proper in this Court.

## DEFINITIONS

2. For purposes of this Judgment, the term “subscriber” shall include a representative of a subscriber and shall mean a customer for Defendants’ wireless telecommunication services, including wireless telephone service, with a California billing address or area code, and a customer shall mean a subscriber. A subscriber does not include a large business account governed by a separate contract of a type not available through either Defendants’ retail stores or any of its network of independent dealers.

3. For purposes of this Judgment, the term “telecommunications services” and “services” shall include any voice or data transmission provided by Defendants to or from a wireless phone.

4. For purposes of this Judgment, the term "communication" shall include any oral, and any written, including electronic, communication.

5. For purposes of this Judgment, the term “phone” shall refer to any wireless device through which telecommunications services can be originated and received.

6. For purposes of this Judgment, the term “customer service” shall refer to Defendants’ department, and its personnel, through which subscribers may communicate concerning Defendants’ services and their accounts.

7. For purposes of this Judgment, the term "charge(s)" shall mean the amount billed to a subscriber.

8. For purposes of this Judgment, the term “disputed charge(s),” “charge(s) in dispute,” “amount(s) in dispute,” or “dispute(s) a charge” shall refer to any charge(s) which the subscriber contends the subscriber did not authorize after a phone was lost or stolen (“LOS”), including those incurred after the LOS but before it was reported to the Defendants.

## INJUNCTION

9. The injunctive provisions of this Judgment apply to AT&T Mobility LLC, its officers, directors, employees, agents, representatives, partners, subsidiaries, wireless affiliates,

1 successors, assigns, and all persons acting in concert or participating with any of them  
2 (collectively, the "Defendants"), in connection with charges billed to a subscriber in California.

3 10. All injunctive relief under this Judgment, including all relief described in paragraph  
4 11, is ordered pursuant to California Business and Professions Code sections 17203.

5 11. Defendants are immediately and permanently enjoined from directly or indirectly  
6 doing any of the acts set forth in this paragraph:

7 A. in connection with a disputed charge, (1) failing to act in accordance with the  
8 provisions of Public Utilities Code section 2890(d)(2)(D) and (e), or (2) expanding a  
9 subscriber's obligations or limiting a subscriber's rights beyond those provisions;

10 B. failing to furnish the information described in this subparagraph 11.B. (1) through (5),  
11 below, clearly and conspicuously (i) with each subscriber agreement; (ii) in the first  
12 communication with a subscriber who initially disputes a charge in writing unless the dispute is  
13 resolved in the first response by an agreement to credit the subscriber's account or refund the  
14 disputed charge in its entirety; (iii) during the oral communication in which a subscriber initially  
15 disputes a charge unless the dispute is resolved during that communication by an agreement to  
16 credit the subscriber's account or refund the disputed charge in its entirety; (iv) during any  
17 subsequent communication about a disputed charge if crediting or refunding of the disputed  
18 charge in its entirety has not occurred; (v) at any time after the initiation of service when  
19 communicating in writing with subscribers about what they should do if their phone is lost or  
20 stolen or if the subscriber disputes a charge, unless the communication is one in which the  
21 service and the subscriber agreement are being summarized, subscribers are informed they can  
22 suspend and restart their service at any time without cost, or clear and conspicuous  
23 cross-reference to the information is also being provided; and (vi) with each subscriber's bill, if  
24 the bill does not provide both the information required under Public Utilities Code section  
25 2890(d)(2)(B) with regard to how to resolve a disputed charge and a clear and conspicuous  
26 cross-reference to the portion of the subscriber agreement that contains the information:

27 (1) subscribers are not responsible for charges they did not authorize;

1           (2) Defendants will carry out an investigation and within 30 days either credit the  
2 subscriber's account or refund any amount paid for the disputed charge in full, or advise the  
3 subscriber that Defendants have determined the disputed charge, in whole or in part, was  
4 authorized and that a credit or refund for the full amount in dispute will not issue for that reason;

5           (3) the customer may submit to Defendants any documents, statements or other  
6 information to show the charge was not authorized;

7           (4) if the subscriber is dissatisfied with the results of Defendants' investigation, the  
8 subscriber may file a complaint asking the California Public Utilities Commission to investigate  
9 and may have other legal rights, provided however, that to avoid confusion after a dispute arises  
10 Defendants may wait until the investigation is completed (which may not be later than the 30  
11 days as provided in sub-paragraph 11 (G)), before informing the customer of his complaint rights  
12 under this sub-paragraph;

13           (5) while an investigation is pending the subscriber need not pay the disputed charge  
14 or any associated late charges, the disputed amount will not be sent to collection, and no adverse  
15 credit report will be made based on the disputed amount;

16           C. discouraging subscribers from having disputed charges investigated;

17           D. stating or implying in any communication with subscribers that failure to report  
18 "immediately" "quickly" "as soon as possible" or in any other manner a lost or stolen phone  
19 diminishes the subscriber's right to an investigation (provided, however, that so long as the  
20 communication clearly does not so state or imply, Defendants may encourage customers in  
21 writing to report a lost or stolen phone when it comes to the subscriber's attention, by such  
22 means as, for example, highlighting the availability of cost-free service suspension and  
23 restoration at a subscriber's request);

24           E. stating or implying in any communication with subscribers that a delay in  
25 reporting a lost or stolen phone is a factor in determining whether disputed charges were  
26 authorized, such as stating or implying in any communication with subscribers that failure to  
27 report a LOSS "immediately" "quickly" or "as soon as possible" will limit the customers rights;  
28 provided however, Defendants may state that an unexplained or unreasonable delay in reporting

1 a lost or stolen phone may be considered as evidence suggesting that the disputed charges, in  
2 whole or in part, were in fact authorized;

3 F. stating or implying in any communication with subscribers that the subscriber's  
4 right to either an investigation or to a favorable outcome to an investigation about disputed  
5 charges is conditioned on the subscriber taking any of the following actions or requiring a  
6 subscriber who disputes a charge to take any of the following actions: reporting a phone stolen to  
7 a third party, submitting any particular document or corroboration, such as a police report of  
8 theft, swearing under penalty of perjury a phone was lost or stolen, disputing the charges in  
9 writing rather than through calling the ordinary customer service number available to subscribers  
10 for questions about their bill, or taking any other particular action, provided however, that  
11 Defendants may advise the subscriber that their determination of whether they find the disputed  
12 charges were authorized or not may depend on the subscriber providing information to  
13 corroborate the subscriber's contention that the phone was lost or stolen, so the subscriber should  
14 provide whatever documents or other information the subscriber believes will support his/her  
15 claim that the phone was lost or stolen;

16 G. unless a disputed charge is resolved by Defendants' agreement to credit the  
17 subscriber's account or refund the disputed charge in its entirety (i) on the Defendants' own  
18 initiative after becoming aware of unauthorized charges, or (ii) during the initial oral  
19 communication about the disputed charge or, if the initial communication is in writing, in  
20 Defendants' first response (and in connection with either (i) or (ii) completing the process so that  
21 the subscriber receives the refund or credit as soon as technically feasible, but no later than the  
22 date for issuance of the second regular bill after the disputed charge is resolved), failing to do  
23 each of the following:

24 (1) carry out a reasonable investigation that considers any reasonably relevant  
25 information available to show whether the charge was authorized;

26 (2) within 30 days from receipt of the dispute, credit or refund any amount billed  
27 for an unauthorized charge, completing the process so that the subscriber receives the refund or  
28

1 credit as soon as technically feasible but no later than the date for issuance of the second regular  
2 bill after the disputed charge is resolved;

3 (3) within 30 days from receipt of the dispute, either credit or refund the disputed  
4 charge, completing the process so that the subscriber receives the refund or credit as soon as  
5 technically feasible but no later than issuance of the second regular bill after the account is  
6 credited, or advise the subscriber that Defendants have determined the disputed charge, in whole  
7 or in part, was authorized and a credit or refund would or would not be allowed;

8 (4) while an investigation is pending refrain from requiring payment of any  
9 disputed charge, assessing any late charges, sending the disputed amount to collection, or  
10 making any adverse credit report based on the disputed charge;

11 H. failing to ensure the provision of appropriate training in the requirements of this  
12 Judgment to all Defendant's personnel who offer, provide, assist in providing, or discuss with  
13 subscribers or potential subscribers in California, Defendants' telecommunications services or  
14 disputed charges, including specifically all customer service personnel;

15 I. providing information, materials or training that is inconsistent with the terms of  
16 this Judgment to any of Defendants' employees, agents or representatives or permitting conduct  
17 that is inconsistent with the terms of this Judgment by any of Defendants' personnel;

18 J. at least twice in the first six monthly bills and beginning no later than 90 days  
19 after entry of judgment, failing to call attention by clear and conspicuous notice to the  
20 contractual changes being provided about unauthorized charges and lost and stolen phones and  
21 by failing to include at least a portion of the notice which shall call attention to the contractual  
22 changes on the first page of the bill near the "amount due" field. Subscribers who begin service  
23 after entry of this Judgment but who are given contracts that fail to comply with the terms of  
24 Paragraph 11 must be provided a revised contract or a clear and conspicuous addendum to their  
25 contract that is in compliance with this Judgment no later than 90 days after entry of this  
26 Judgment. Subscribers who begin service after this Judgment is entered and receive a subscriber  
27 agreement that complies with Paragraph 11, need not be given notice under this sub-Paragraph.

28

1           K.     In respect (1) to disputed charges that Defendants do not agree to resolve by  
2 issuing a credit or refund of the disputed charge in its entirety during the oral communication in  
3 which a subscriber initially disputes a charge or in the first responsive communication after  
4 receiving the initial written communication in which a subscriber disputes a charge (so long as  
5 the response is tendered within 20 days of receipt), or (2) to disputed charges which Defendants  
6 do not in fact resolve by sending the consumer a refund as agreed in the initial communication or  
7 entering a credit on the consumer's bill as agreed in the initial communication by the date for  
8 issuance of the second regular bill after the disputed charge is resolved, failing to do the  
9 following:

- 10           1.     maintain records of disputes about unauthorized charges for four years from the  
11                   date Defendants are first apprized of a dispute;
- 12           2.     for six months, beginning three months after October 31, 2007, provide to the  
13                   Attorney General every three months a report sufficient to show the date  
14                   Defendant learned of the dispute, the amount in dispute, the date Defendant  
15                   concluded its investigation, and the amount, if any, credited or refunded, and  
16                   within 30 days of a request by the Attorney General, provide any other dispute  
17                   records requested by the Attorney General regarding any or all of the disputes  
18                   referenced in the report;
- 19           3.     for three years after the last date on which records are provided to the Attorney  
20                   General under subparagraph 11.K.2., provide copies of the dispute records to the  
21                   Attorney General within 30 days after a request to review the records; and
- 22           4.     thereafter, make dispute records available in accordance with otherwise lawful  
23                   requests;

24 For purposes of this paragraph, "dispute records" or "records of disputes" include any evidence  
25 of communications between Defendants and the subscriber about the dispute including written  
26 communications and notes about oral communications, written information provided by the  
27 subscriber, the information on which Defendants' based their determination that the charges  
28 were authorized, and documents sufficient to show the date Defendants learned of the dispute,



1 the amount in dispute, the date Defendants concluded their investigation, and the amount, if any  
2 credited or refunded.

3 TIMING

4 12. This Judgment is effective on entry except as otherwise provided. The provisions  
5 of sub- Paragraphs 11 B-K, shall be effective as of October 31, 2007.

6 RESTITUTION

7 13. Within 120 days after entry of Judgment, Defendants shall notify, in a clear and  
8 conspicuous manner, in a form agreed to by the California Attorney General and included with  
9 AT&T Mobility's monthly bill, each of its existing customers of their right to make a claim for a  
10 credit to their account for disputed charges billed to, or via, a phone at any time from January 1,  
11 2003, to date of notification. The notice shall include a description of their rights consistent with  
12 Paragraph 11. Having tendered the dispute at or after the time the charges were incurred or at  
13 any time before receiving notice of restitution under this Paragraph shall not be relevant or a  
14 prerequisite to determining the validity of the claim. Defendants shall respond to claims made  
15 under this Paragraph with the same standards and the same customer rights and remedies, and  
16 with the same timeliness, as detailed in Paragraph 11. Those seeking restitution may contact  
17 Defendants through its ordinary customer service process or through its website, at the  
18 consumer's option, provided however, that Defendants may engage a third-party claim resolution  
19 service approved by the Attorney General to whom subscribers seeking restitution may be  
20 referred by means of (i) a Toll-Free number printed in the Restitution Notice, and (ii) by direct  
21 transfer if the customer calls customer service. If the subscriber's records are no longer available  
22 to customer service through the Defendants' database, Defendants do not violate this Judgment  
23 by taking up to an additional 30 days to resolve the claim. If restitution is granted under this  
24 Paragraph, Defendants shall determine whether the disputed charge had ever been the basis of an  
25 adverse report to a credit bureau and if so, Defendants shall correct the record. In addition to any  
26 other rights they may have to raise such a dispute, Customers notified under this sub-paragraph  
27 shall have 90 days from notification to submit a claim under this Judgment.



1           14.     Within 180 days of entry of this Judgment, if anyone whose wireless service was  
2 billed by Defendants to a California address at the time he or she incurred charges who is no  
3 longer a current customer of Defendants, contacts the Defendants to seek restitution, Defendants  
4 shall treat that person's claim to restitution in the same way and under the same standards as  
5 apply to Defendants' existing subscribers under the preceding paragraph 13, except (i)  
6 Defendants may take up to 90 days within which to resolve the claim without violating this  
7 Judgment, so long as Defendants acknowledge receiving any written claim within 30 days of  
8 receipt, and (ii) any restitution shall be provided in the form of a refund, rather than a credit. If  
9 restitution is granted under this Paragraph, Defendants shall determine whether the disputed  
10 charge had ever been the basis of an adverse report to a credit bureau and if so, Defendants shall  
11 correct the record.

12           15.     Defendants shall provide to the Attorney General a periodic report every 90 days  
13 beginning December 31, 2007, and a final report covering the period up to September 1, 2008,  
14 by September 10, 2008. The periodic reports shall specify, in respect to the just completed  
15 reporting period, the number of persons who contacted Defendants and requested restitution; the  
16 number of those to whom Defendants gave a full refund or credit of the disputed charges, and the  
17 total refunds or credits; and for those to whom Defendants did not give a full refund or credit, the  
18 subscriber name, address, telephone number, the amount in dispute, the amount, if any, refunded  
19 or credited, and copies of all documents related to Defendants' investigation, including  
20 documentation of the investigation Defendants carried out and Defendants' reason for not  
21 crediting or refunding the full disputed amount. The final report shall provide a cumulative total  
22 or list for each category of information previously submitted in the periodic reports.

23                               OTHER MONETARY PROVISIONS

24           16.     On entry of this Judgment, Defendant AT&T Mobility LLC shall pay \$500,000 to  
25 the Office of the Attorney General of California if not previously paid according to the terms of  
26 the Stipulation for entry of this Judgment, of which \$250,000 shall be for costs of investigation  
27 and attorneys' fees, and \$250,000 of which shall be deposited by the Attorney General of  
28 California in the Unfair Competition Law Fund.

1           17. Defendant AT&T Mobility LLC shall pay all court costs associated with its  
2 appearance in this action, including any fee for the filing of the stipulation for entry of judgment.  
3 Except as otherwise provided herein, each party shall bear its own costs, including attorneys'  
4 fees.

18. All payments required to be made to the Attorney General, and all notices and reports required to be provided to the Attorney General, shall be delivered to Deputy Attorney General John G. Donhoff, Jr., at his address of record (or to such other person and address identified in writing by the Attorney General).

## OTHER PROVISIONS

10           19.     This Judgment resolves the above-captioned action, and is meant to resolve those,  
11 and only those, matters set forth in the allegations of the Complaint filed in this action and which  
12 occurred prior to entry of this Judgment.

13           20.     Defendants shall not state or imply or cause to be stated or implied that the  
14     Attorney General or any state agency or officer has approved, sanctioned, or authorized any  
15     practice, act or conduct of Defendants.

21. Nothing in this Judgment shall be construed as relieving Defendants of their obligation to comply with all applicable local, state and federal laws, regulations or rules, nor shall any of the provisions of this Judgment be deemed to be permission to engage in any acts or practices prohibited by any applicable law, regulation, or rule.

20            22.        This Court shall retain jurisdiction over this matter for the purposes of enabling  
21 any party to this Judgment to apply to the Court at any time, after serving notice on the other  
22 parties, for such further orders and directions as might be necessary or appropriate for the  
23 construction or carrying out of this Judgment, for modification of the injunctive provisions of  
24 this Judgment, and for the People to apply at any time for enforcement of any provisions of this  
25 Judgment and for punishment for any violation of this Judgment.

26      23.      This Judgment shall take effect immediately upon entry by the clerk, and the clerk

1 is ordered to enter this Judgment forthwith.

2 **IT IS SO ORDERED.**

3

4 DATED: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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**STATE OF FLORIDA  
OFFICE OF ATTORNEY GENERAL**

**IN THE MATTER OF:**

**Cingular Wireless LLC**

**Respondent.**

**CASE NO. L03-3-1219**

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**ASSURANCE OF VOLUNTARY COMPLIANCE**

Pursuant to the provisions of Chapter 501, Part II, Florida Statutes, the OFFICE OF THE ATTORNEY GENERAL ("Attorney General") has, on behalf of the State of Florida and its citizens, opened investigations into the marketing, advertising, and business practices of certain advertisers, content providers, and aggregators of third-party mobile content, including investigations of these practices in the context of third-party billing by wireless service providers, including Cingular Wireless LLC, now known as AT&T Mobility LLC ("Respondent").

Respondent has fully cooperated with the Attorney General, and this Assurance of Voluntary Compliance ("AVC") is solely intended to resolve the investigation against Respondent with respect to Respondent's third-party mobile content business (the "Investigation"). This AVC does not constitute evidence of a finding of law or fact by any court or agency that Respondent has engaged in any act or practice declared unlawful by any laws, rules or regulations of the State of Florida or as might apply in Florida. Respondent denies any liability and enters into this AVC without any admission of liability and for the purpose of the resolution of the Investigation only.

**EXHIBIT**

F

The Office of the Attorney General, by the signature of his Deputy affixed hereto, does in this matter accept this AVC in termination of its Investigation, pursuant to Section 501.207(6), Florida Statutes, and by virtue of the authority vested in the Office of the Attorney General by said statute and without any finding of wrongdoing on the part of Respondent.

### **JURISDICTION AND VENUE**

1. Respondent is a wireless voice and data service provider.
2. IT IS AGREED by the parties that the State of Florida has jurisdiction over Respondent for the purpose of entering into this AVC and for any enforcement actions arising out of this AVC.
3. IT IS FURTHER AGREED by the parties that venue for any matter relating to or arising out of this AVC shall lie solely in Leon County, Florida.

### **DEFINITIONS**

4. As used herein:

A. "Clear and Conspicuous" means that a statement is made in a manner readily noticeable and understandable to the persons to whom it is directed. To determine whether a statement is clear and conspicuous, factors to consider include:

- i) whether it is located sufficiently near any other statement that clarifies, modifies, or explains it;
- ii) whether it is located sufficiently near any other statement that it clarifies, modifies, or explains;
- iii) whether it contradicts, or renders confusing or ambiguous, any other statement; and

iv) whether it is or appears to be inconsistent with any other statement.

B. "Mobile Content" refers to content, applications, and goods and services purchased using a wireless phone or device.

C. "Third-Party Mobile Content" means Mobile Content sold by a Third-Party Provider directly to Respondent's wireless customers and charged to the bill of one of Respondent's wireless customers or withdrawn from the prepaid account of one of Respondent's wireless customers.

D. "Third-Party Provider" means entities other than Respondent that advertise, aggregate billing for, offer, and/or sell Third-Party Mobile Content directly to Respondent's wireless customers including Third-Party Mobile Content subscriptions.

E. "Account Holder" means a Florida residential subscriber with a post-paid account for wireless service with Respondent.

F. "Initial Representation" means all sponsored links, banner ads, pop-ups, e-mail subject lines, and any and all other primary impressions created or presented by a Third-Party Provider relating to its advertisement of Third-Party Mobile Content.

#### **TERMS OF COMPLIANCE**

5. In connection with any Internet-based purchase of Third-Party Mobile Content subscriptions by an Account Holder, Respondent shall include provisions in all of its contracts with Third-Party Providers prohibiting the following:

A. the use of the terms "free," "complimentary," "no charge," "without charge," or any other term that reasonably leads a customer to believe that he or she may receive something of value, entirely or in part without a requirement of compensation in any form, or that tends to convey the impression to the consuming public that an article

of merchandise or service is "free," unless the Initial Representation to the customer clearly and conspicuously states that the free item may be received by a customer pursuant to his or her authorization of billing for a paid subscription plan, the price of the plan, and its term. For example, a free ringtone offer requiring a customer to subscribe to a monthly subscription plan at a cost of \$9.99 per month shall say, "Free ringtone with paid monthly subscription of \$9.99/month."

B. the advertisement or promotion of any Third-Party Mobile Content that is available only through certain wireless carriers, unless the advertisement clearly and conspicuously discloses that the Third-Party Mobile Content is not available through all carriers.

C. the advertisement or promotion of Third-Party Mobile Content that is available only on certain makes or models of mobile devices unless the advertisement clearly and conspicuously discloses that the Third-Party Mobile Content is not available on all mobile devices.

D. the inclusion in any offer of a term or condition necessary to its acceptance whereby the customer agrees to accept advertising or promotional messages delivered electronically to cell phones via text messaging, email or otherwise, that are unrelated to the current offer, unless consented to by the customer.

E. the placement of pre-checked boxes in an offer intended to be used for acceptance of a term(s) or condition(s) of the offer.

6. In connection with any Internet-based purchase of Third-Party Mobile Content subscriptions by an Account Holder, Respondent shall include provisions in all of its contracts with Third-Party Providers requiring that Third-Party Providers:

A. clearly and conspicuously disclose the price and billing period of the recurring charge of the Third-Party Mobile Content immediately adjacent to any cell-phone-number-submit field and any PIN-code-submit field, e.g., "\$9.99 per month."

B. clearly and conspicuously disclose on any cell-phone-number-submit web page and any PIN-code-submit web page the following material terms and conditions:

1. the initial and recurring charge for the Third-Party Mobile Content,
2. whether other charges may apply,
3. that the customer's account will be charged automatically with no further action on the part of the customer; the frequency with which the charge will automatically be made to the account in the absence of cancellation of the plan; and that the customer will continue to receive the charges until the customer cancels the plan,
4. how to cancel the plan,
5. the mechanism for charging the customer, e.g., "on your cell phone bill or deducted from your prepaid balance on your cell phone account," and
6. that the purchase must be authorized by the Account Holder.

C. provide an Internet hyperlink to the terms and conditions of the offer on every cell-phone-number-submit page and PIN-code-submit page in the Internet order path.

7. In the event that all or part of the messaging to the customer in connection with the opt-in confirmation and purchase process is controlled by Respondent, the following must be clearly and conspicuously disclosed as part of any Third-Party Mobile Content subscription transaction with an Account Holder:



- A. the price and term of the subscription (e.g. \$9.99/ month);
- B. how to cancel or stop the subscription.

8. For all new service activations, service renewals, or changes to an existing Wireless Service Agreement, Respondent shall utilize a Wireless Service Agreement in Florida that contains the following disclosure:

**"Mobile Content**

I understand that wireless devices can be used to purchase goods, content, and services (including subscription plans) like ring tones, graphics, games, and news alerts from AT&T or other companies. I understand that I am responsible for all authorized charges associated with such purchases from any device assigned to my account, that these charges will appear on my bill (including charges on behalf of other companies), and that such purchases can be restricted by using parental controls available from your AT&T salesperson, at [www.wireless.att.com](http://www.wireless.att.com), or by calling AT&T.

9. Respondent shall notify all existing Account Holders by bill insert for Account Holders who receive paper bills and electronically for Account Holders who receive electronic bills of the existence of Mobile Content through the following disclosure:

"Your wireless devices can be used to purchase goods, content, and services (including subscription plans) like ring tones, graphics, games and news alerts, from AT&T or other companies ("Mobile Content"). You are responsible for all authorized charges associated with such purchases from any device assigned to your account. Charges for Mobile Content will appear on your bill (including charges on behalf of other companies), and Mobile Content purchases can be

restricted by use of parental controls or similar features. Parents should consider using parental controls available from AT&T. Please visit our website at [www.wireless.att.com](http://www.wireless.att.com) or speak with an AT&T customer representative for further information." See attached Exhibit "A."

10. Respondent will provide Account Holders access via its DirectBill Internet portal (or as it is otherwise named) to information concerning Third-Party Mobile Content subscription purchases on their account as well as their ability to seek refunds. Further, Respondent shall provide Account Holders monthly wireless service bills that have a separate section that includes charges on behalf of other companies that provide mobile content to AT&T customers and in which these charges are clearly, conspicuously, and separately listed. The separately listed charges in this section of the monthly bill shall include a readily accessible phone number that Account Holders can call to dispute such charges.

11. With respect to its billing for Third-Party Mobile Content, Respondent shall continue its practice of resolving billing disputes, including issuing credits and refunds, without referring the customer to a Third-Party Provider for such resolution. In addition, with respect to resolving billing disputes, Respondent must:

A. In those instances in which the billing for Third-Party Mobile Content results in a recurring charge, promptly and automatically cancel or terminate the customer's enrollment in any recurring membership program or plan upon request via customer care or using the DirectBill Internet Portal (or as it is otherwise named);

B. When an Account Holder contacts a customer service representative regarding a disputed Third-Party Mobile Content subscription purchase; the customer must be offered Respondent's Purchase Blocker feature free of charge.

### **REPORTS**

12. For a period of one (1) year following the execution of this AVC, Respondent agrees to provide the Office of the Attorney General, through the undersigned Assistant Attorney General, with quarterly reports describing Respondent's resolution of Account Holder complaints related to the matters addressed herein. Respondent shall provide such reports in an agreed format.

13. For a period of two (2) years following execution of this AVC, Respondent shall, upon written request by the Attorney General or his designee to Respondent's legal counsel or its registered agent for service of process, and an opportunity to object, reasonably and promptly cooperate with the Office of the Attorney General in its investigation of any other Third-Party Provider that the Attorney General may desire to investigate. Such cooperation shall include, but is not limited to, promptly providing the Attorney General with all non-privileged documents requested related to such investigation within thirty (30) calendar days of a request for such material, or as otherwise agreed.

### **MONETARY TERMS**

#### **Customer Credits and Refunds**

14. Respondent shall issue credits and refunds to Account Holders for past unauthorized charges for Third-Party Mobile Content subscription purchases ("Refund Program"). Respondent shall provide clear and conspicuous notice of the Refund

Program ("Refund Program Notice") by bill insert to all Account Holders who receive paper bills, electronically for Account Holders who receive electronic bills, and by electronic mail to former Account Holders for whom Respondent retains an email address and for whom Respondent has permission to send emails. The text of the "Refund Program Notice" shall be as follows:

"This is an important notice regarding the ability of certain AT&T/Cingular customers in Florida to obtain credits or refunds for unauthorized purchases of third-party mobile content subscriptions, such as subscriptions for ring tones, graphics, and games. AT&T, which was formerly known as Cingular, has entered into an agreement with the Florida Attorney General following an investigation into marketing and advertising practices of certain third-party mobile content providers. As part of the agreement, AT&T is offering to provide account holders with credits or refunds for unauthorized mobile content subscription purchases. If AT&T/Cingular has billed your account for the purchase of a third-party mobile content subscription that you did not authorize, you may receive a credit or refund of all amounts paid. Customers may seek refunds even if they are no longer AT&T or Cingular customers. Please see *[Include contact information including Internet address and/or toll-free telephone number]* for more information on the details of the Refund Program and how to make a claim." See attached Exhibit "B."

The Refund Program Notice shall be made in conjunction with the notice provided in Paragraph 9 of this AVC. Respondent and the Attorney General agree that the Refund Program shall remain open for six months following the issuance of the Refund Program

Notice. Respondent agrees that for each current and former Account Holder making a claim, Respondent will credit or refund the full amount of the Third-Party Mobile Content subscription amounts paid by the Account Holder, and there shall be no limitation on the total amount credited or refunded to all Account Holders under the Refund Program.

Notwithstanding the foregoing, Respondent is not required to issue credits or refunds in cases of demonstrable customer abuse or fraud. During the six-month period, Respondent will provide monthly reports to the Attorney General showing the amount of credits and refunds issued and detail as to claims denied in connection with the Refund Program.

#### **Settlement Funds**

15. Respondent shall pay to the Attorney General the sum of \$2,500,000 (two million, five hundred thousand dollars) for attorney's fees and costs of this investigation and costs of investigations into related matters, made payable to the Legal Affairs Revolving Trust Fund and sent to Will Haselden, Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, PL-01, The Capitol, Tallahassee, Florida 32399-1050, pursuant to Section 501.2101, Florida Statutes. In addition, Respondent shall contribute the sum of \$500,000 to be used by the Attorney General for consumer education and public awareness regarding safety on the internet, made payable to the State of Florida and sent to Will Haselden, Assistant Attorney General, Office of the Attorney General, Department of Legal Affairs, PL-01, The Capitol, Tallahassee, Florida 32399-1050, pursuant to Section 501.207(6), Florida Statutes

#### **NOTICE OF DEFAULT AND OPPORTUNITY TO CURE**

16. In consideration for the fulfillment of the terms of compliance and monetary obligations set forth above, no penalties shall be imposed against Respondent pursuant

to the Attorney General's investigation. If the Attorney General believes that a material breach of the AVC has occurred, the Attorney General shall give written notice to Respondent within twenty (20) days of the alleged material breach. The notice shall describe in detail the claimed material breach. Following notice, Respondent shall have a reasonable opportunity to cure during which time no enforcement action shall be taken. Specifically, Respondent shall have thirty (30) days from the receipt of the notice within which to provide a good faith written response to the Attorney General's determination. The response shall include, at a minimum, either:

- A. A statement explaining why Respondent believes it is in full compliance with the AVC; or
- B. An explanation of how the alleged material breach occurred; and
  - 1. A statement that the alleged breach has been cured and how; or
  - 2. A statement that the alleged breach cannot be reasonably cured within thirty (30) days from receipt of the notice, but (1) Respondent has begun to take corrective action to cure the alleged breach; (2) Respondent is pursuing such corrective action with reasonable and due diligence; and (3) Respondent has provided the Attorney General with a detailed and reasonable timetable for curing the alleged breach.

#### **APPLICATION, ACCEPTANCE, AND OTHER TERMS**

17. Respondent shall be responsible for making the substantive terms and conditions of this Assurance known to Respondent's officers, directors, employees, agents, representatives, independent contractors, successors, and assigns.

18. The terms of this AVC and the relief covered herein are limited to the State of Florida and Respondent's Florida subscribers.

19. Except as otherwise provided herein, Respondent will implement the terms of this AVC within ninety (90) days following the effective date of the AVC. Respondent may, supported by the production of competent, substantial evidence of technological advances in the online advertising of third-party content, or changes to the law, request modification or amendment of this AVC to comport with those technological changes or changes to the law. The Attorney General will consider such a request in good faith and will provide a response to Respondent's request within a reasonable time.

20. Upon receipt of the executed AVC, Will Haselden will sign the AVC and then forward it to the Deputy Attorney General. The Deputy Attorney General has final authority to approve or disapprove of the entry of the AVC. This AVC shall become effective upon its acceptance by the Deputy Attorney General, who may refuse to accept it at his discretion. Upon execution by the Deputy Attorney General, Respondent will, within ten business days, provide the Settlement Funds to Will Haselden in accordance with Paragraph 15 of this AVC.

21. The Attorney General on behalf of the State of Florida and its citizens, hereby releases, acquits, and forever discharges Respondent from any and all actions, causes of action, obligations, liabilities, claims or demand for damages, civil penalties, claims for relief, or demand whatsoever in law or in equity, civil or administrative, which were asserted or maintained, could have been asserted or maintained, or which could in the future be asserted or maintained against Respondent in any civil, enforcement action or administrative action, or proceeding, based upon, arising out of, related to, or connected

with, directly or indirectly, the Investigation and any matters related thereto. It is agreed that the Attorney General will not reopen the Investigation except to the extent it investigates an alleged breach of this AVC. This AVC resolves the pending litigation related to the Investigation, *State of Florida, Department of Legal affairs v. Cingular Wireless LLC*, 06-CA-2810 (Leon Co. Circuit Ct.), on appeal as *Cingular Wireless LLC vs. State, Dept. of Legal Affairs*, 1D07-776 (Fla. 1st DCA). Upon execution of this AVC, the Attorney General shall dismiss its Circuit Court action with prejudice, and the Respondent shall dismiss its appeal.

22. This AVC is not and shall not in any event be construed, deemed to be, and/or used as: (a) an admission or evidence of the validity of any claim that the Attorney General has or could assert against Respondent, or an admission of any alleged wrongdoing or liability by Respondent; and/or (b) an admission or evidence of any fault, fact, act, or omission by Respondent in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal, other than such proceedings as may be necessary by the Attorney General to consummate or enforce this AVC. Moreover, by entering into this AVC and agreeing to the terms and conditions provided herein, Respondent does not intend to waive and does not waive any defenses it may have in any other action or proceeding that has been or may be brought against it by any person, entity, and/or agency arising from advertising or promoting content.

23. This AVC, any action taken to reach, effectuate, or further this AVC, and the terms set forth herein, shall not be construed or used as an admission by or against Respondent of any fault, wrongdoing, or liability whatsoever, or as a waiver or limitation of any defenses otherwise available to Respondent. Entering into or carrying out this



AVC, or any negotiations or proceedings related thereto, shall not in any event be construed as, or deemed to be evidence of, any admission or concession by either party, or to be a waiver of any applicable defense. However, nothing in this AVC, including this paragraph, shall be construed to limit or to restrict Respondent's right to use this AVC, or payments made hereunder, to assert and maintain the defenses of *res judicata*, collateral estoppel, payment, compromise and settlement, accord and satisfaction, or any other legal or equitable defenses in any pending or future legal or administrative action or proceeding.

24. No waiver, modification or amendment to the terms of this AVC shall be valid or binding unless made in writing, signed by the parties and then only to the extent set forth in such written waiver, modification, or amendment.

25. No waiver of any term, provision, or condition of this AVC, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the party making the waiver.

26. This AVC constitutes the entire agreement and understanding between the parties relating to the subject matter contained herein, and this AVC may not be altered, amended, or modified in any respect or particular whatsoever except by a writing duly executed by each of the parties hereto.

IN WITNESS WHEREOF, AT&T Mobility LLC has caused this Agreement to be executed by PAUL WEISBECKER GENERAL ATTORNEY, a duly authorized representative of AT&T Mobility LLC f/k/a Cingular Wireless LLC as a true act and deed, in BEXAR County, Texas, this 27<sup>th</sup> day of FEBRUARY 2008.

BY MY SIGNATURE I hereby affirm that I am acting in my capacity with AT&T Mobility LLC f/k/a Cingular Wireless LLC and that by my signature I am binding said company to this Agreement.

[Signature]  
AT&T Mobility LLC representative

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

BEFORE ME, an officer duly authorized to take acknowledgments in the State of TEXAS, personally appeared Paul Weisbecker, as General Attorney of AT&T mobility LLC, and acknowledged before me that he executed the foregoing instrument for the purposes therein stated, on this 27<sup>th</sup> day of February, 2008.

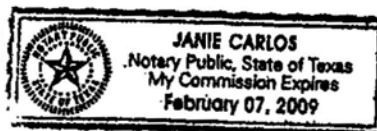
Sworn to and subscribed before me  
this 27 day of Feb., 2008.

Personally known ☒ or  
Produced Identification ☐ (check one)  
Type of Identification Produced: \_\_\_\_\_

[Signature]  
Janie Carlos (print name)

NOTARY PUBLIC

(Print, type or stamp commissioned  
name of Notary Public)



Accepted this 28 day  
of February, 2008.

Michael A. Palech  
For WILLIAM M. HASELDEN  
Assistant Attorney General


Robert A. Hamm  
Deputy Attorney General  
OFFICE OF THE ATTORNEY GENERAL  
The Capitol, PL-01  
Tallahassee, Florida 32399-1050  
(850) 245-0140

Important notice regarding mobile content



## Exhibit A

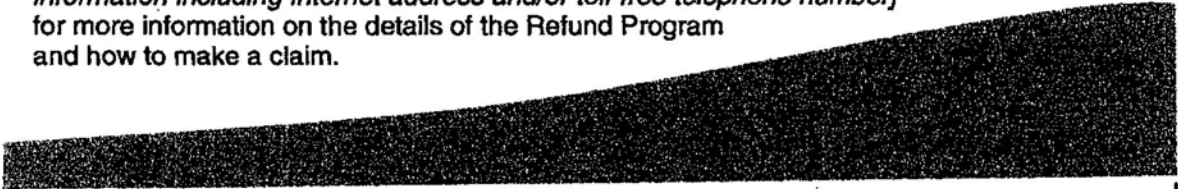
Your wireless devices can be used to purchase goods, content, and services (including subscription plans) like ring tones, graphics, games and news alerts, from AT&T or other companies ("Mobile Content"). You are responsible for all authorized charges associated with such purchases from any device assigned to your account. Charges for Mobile Content will appear on your bill (including charges on behalf of other companies), and Mobile Content purchases can be restricted by use of parental controls or similar features. Parents should consider using parental controls available from AT&T. Please visit our website at [www.wireless.att.com](http://www.wireless.att.com) or speak with an AT&T customer representative for further information.



Important information for Florida customers who have  
paid for unauthorized mobile content subscriptions



This is an important notice regarding the ability of certain AT&T/Cingular customers in Florida to obtain credits or refunds for unauthorized purchases of third-party mobile content subscriptions, such as subscriptions for ring tones, graphics, and games. AT&T, which was formerly known as Cingular, has entered into an agreement with the Florida Attorney General following an investigation into marketing and advertising practices of certain third-party mobile content providers. As part of the agreement, AT&T is offering to provide account holders with credits or refunds for unauthorized mobile content subscription purchases. If AT&T/Cingular has billed your account for the purchase of a third-party mobile content subscription that you did not authorize, you may receive a credit or refund of all amounts paid. Customers may seek refunds even if they are no longer AT&T or Cingular customers. Please see *[Include contact information including Internet address and/or toll-free telephone number]* for more information on the details of the Refund Program and how to make a claim.



**Exhibit B**